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Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 214.

GARRETT B. HUNT AND JACOB ESCHLEMAN,
APPELLANTS,

vs.

DAVID D. OLIVER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED APRIL 9, 1883.

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[* Omitted, as per stipulation of counsel.]

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2549 *Bill of Complaint.*

UNITED STATES OF AMERICA, *Eastern District of Michigan,* } ss:

Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

To the judges of the circuit court of the United States for the eastern district of Michigan:

Garret B. Hunt, who is a citizen of the town of Clarence, in the State of New York, and Jacob Eschleman, who is likewise a citizen of the town of Clarence, in the State of New York, bring this their bill of complaint against David D. Oliver and Sarah Ann Oliver, his wife, both of whom are citizens of the State of Michigan, and thereupon your orators complain and respectfully show unto the court that on or about the seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, the said David D. Oliver, the defendant above named, became and was justly indebted unto the said complainants, Garret B. Hunt, Jacob Eschleman, & Henry S. Cunningham in the sum of thirty-five thousand dollars ($35,000) and being so indebted, the said David D. Oliver, in order to secure to your orators and the said Henry S. Cunningham the payment thereof, with interest, did make and execute, under his hand and seal, and deliver to the said Hunt, Eschleman, and Cunningham, his certain bond or writing obligatory by which he bound himself to pay to said parties or their assigns the said sum of thirty-five thousand dollars, in manner and form following, viz: Five thousand thereof on the first of July, 1867, ten thousand dollars on the first of October, 1867, five thousand thereof on the first of July, eighteen hundred and sixty-eight, five thousand dollars on the first of October, eighteen hundred and sixty-eight, five thousand dollars on the first of July, eighteen hundred and sixty-nine, and five thousand dollars on the first of October, eighteen hundred and sixty-nine, with annual interest on the whole sum unpaid, payable on the first of October in each and every year, with the privilege of paying said principal sum at any time sooner in sums not less than fifteen hundred dollars at a time, as in and by said bond or writing obligatory, and now in the possession of your orators, and ready to be produced and proved as this honorable court shall direct, and to which, when produced and proved, your orators for greater certainty pray leave to refer, will more fully and at large appear.

And your orators further show unto the court that the said David D. Oliver, together with Sarah Ann, his wife, on the said seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, in order to secure to the said Garret B.
2550 Hunt, Jacob Eschleman, and Henry S. Cunningham the payment of the said sum of money above mentioned, together with the interest thereon in manner aforesaid, did execute, under their hands and seals, and deliver to the said Hunt, Eschleman, and Cunningham, a certain indenture or mortgage, bearing date the

same day and year last aforesaid, and thereby, for the consideration of said sum of thirty-five thousand dollars, lawful money of the United States, to them in hand paid, the receipt whereof by the said indenture or mortgage duly confessed and acknowledged, the said David D. Oliver and the said Sarah Ann Oliver, his wife, the parties of the first part, in and to said indenture or mortgage, did grant, bargain, sell, release, enforce, and confirm unto the said Garret B. Hunt, Jacob Eschleman, and Henry S. Cunningham, the parties of the second part, in the said indenture, and to their heirs and assigns forever, all those certain pieces or parcels of land in the State of Michigan, and interests in lands in the State of Michigan more particularly described as follows:

All those tracts or lots of land lying in the county of Alpena, in the State of Michigan, and particularly described according to the Government survey thereof, as follows, viz: In township twenty-nine (29) north, range eight east, three thousand acres, namely, in section twenty-one the northwest quarter, the northwest quarter of the southwest quarter, the east half of the southwest quarter, and the east half of the section; in section twenty-two (22) the north half of the section, the northwest quarter of the southwest quarter, and the east half of the southwest quarter; in section twenty-three the west half of northwest quarter, and southwest quarter, in section twenty-five, the west half of the northwest quarter; in section twenty-six, the east half of the northeast quarter, the southwest quarter of the northwest quarter, the southwest quarter, the west half of the southeast quarter, and the southeast quarter of the southeast quarter; in section twenty-seven, the west half of the northeast quarter, the southeast quarter of the northeast quarter, and the southeast quarter; in section thirty-four, the east half of the section; in section thirty-five, the northwest quarter, the south half of the southwest quarter, and the east half of the section; section thirty-six, the south half of the southwest quarter. The lands and premises above described being the same lands and premises conveyed by the St. Mary's Ship Canal Company to Garret B. Hunt and others, by deed dated October 1st, 1863, and recorded in the register's office of Alpena county, in liber B of deeds, on pages twenty-nine, thirty and thirty-one. Also all those tracts or lots of lands lying in the county of Alpena, and State aforesaid, and more particularly described according to the Government survey thereof, as follows, namely: In section twenty-seven, the west half of the section; in section twenty-eight, the east half of the northwest quarter, the south half of the southwest quarter, and the east half of the section; in section thirty-two, the east half of the northeast quarter; in section thirty-three, the north half of the northeast quarter, and the northwest quarter. All in township (29) twenty-nine north, of range eight east, containing eleven hundred and twenty acres. The lands and premises above described being the same lands and premises conveyed by the St. Mary's Falls Ship Canal Company, to the said Garret B. Hunt and others, by
2551 deed dated October 1st, 1863, and recorded in the register's office of Alpena county, in liber B of deeds, on pages twenty-seven and twenty-eight.

The above tracts or parcels of lands containing in all four thousand one hundred and twenty acres more or less according to the returns of the surveyor general. Also the undivided two-thirds part of all those certain tracts or lots of land lying in said county of Alpena, being part of seven hundred and fifty thousand acres of land patented on the 25th day of May, 1855, by the State of Michigan to the Saint Mary's Falls Ship Canal Company, and more particularly described according to the Government survey thereof, as follows, viz.: in township twenty-nine (29) north, range eight east thirteen hundred and sixty acres, to wit: in section eight the northeast quarter and the east half of the northwest quarter and the south half of the section; in section nine the west half of the northwest quarter and the west half of the southwest quarter, also all of section seventeen. Also all of those other tracts or lots of land being part of said seven hundred and fifty thousand acres of land situate in said county of Alpena, and more particularly described according to the Government survey thereof, as follows, viz.: the southeast quarter of the southeast quarter of section seven; the east half of the northwest quarter, and the east half of the southwest quarter, and the southwest quarter of the southwest quarter, and the west half of the southeast quarter of section eight; the northwest quarter of the northeast quarter of section (17) seventeen; also, in the same section, the northwest quarter and northwest quarter of the southwest quarter; in section eighteen the northeast quarter of the northeast quarter; all in township twenty-nine, north of range seven east, and containing six hundred acres. Also all those other tracts or parcels of land in township twenty-nine (29) north of range (8) eight east, and described as follows: south fractional half of section twelve (12) containing two hundred and twenty-seven $\frac{05}{100}$ acres more or less, with the saw-mill and other improvements thereon; south half of section eleven, three hundred and twenty (320) acres; the north half of the northeast quarter, the west half of the northwest quarter, and west half of southwest quarter of section fourteen, and the northeast quarter; the south half of northwest quarter, and the south half of section fifteen, containing eight hundred acres; also the northwest fractional quarter ($\frac{1}{4}$,) the northeast quarter of the southwest fractional quarter, and east half of section nineteen, and the entire section twenty (20,) containing one thousand one hundred fifty-four $\frac{20}{100}$ acres more or less according to the Government surveys in Michigan; also all those lots or tracts of land in township twenty-eight (28) north of range eight (8) east, described as follows: southwest quarter of northeast quarter, northwest fractional quarter, and southwest quarter of section four (4,) the southwest quarter of northwest quarter and the south half of section five (5,) the east half of section six (6,) the east half of northeast quarter, and northwest quarter of northeast quarter of section seven (7,) the north half of northwest quarter, and east half of section eight (8,) the north half of section nine, and the southwest quarter, and the northwest quarter of southeast quarter of section nine (9), the entire
2552 section ten (10), the north half of southeast quarter, the southeast quarter of southeast quarter, the north half of

gain, sell, release, and convey the said premises [illegible]
2553 part thereof, with the appurtenances, at public auction to
vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns, forever, good, ample, and sufficient deed or deeds of conveyance in the law, pursuant to the statute in that case made and provided, rendering the surplus money, if any there should be, to the said parties of the first part, their heirs, executors, or administrators, after deducting the principal and interest money due as aforesaid, and the costs and charges of such vendue and sale aforesaid, as in and by the said indenture of mortgage, duly made and executed by the said David D. Oliver & Sarah Ann Oliver, under their hands and seals, and now in the possession of your orators, ready to be produced and proved as this honorable court shall direct, reference being thereto had, [as] will more fully and at large appear.

And your orator further shews unto the court that afterwards, to wit, on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and sixty-six, and also on the thirtieth day of January, in the year eighteen hundred and sixty-seven, the formal execution of the said indenture of mortgage was duly acknowledged by the said David D. Oliver and Sarah Ann Oliver, his wife, before one G. B. Melville, then a notary public in and for said county of Alpena, and duly authorized and empowered to take acknowledgment of deeds, as will on reference to the certificate of acknowledgment endorsed thereon, signed by said G. B. Melville, more fully and at large appear, and to which for greater certainty your orators pray leave to refer.

And your orators further shew unto the court that afterwards, to wit, on the thirty-first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, the said indenture of mortgage, together with the certificate of acknowledgment thereof, was in due form of law recorded in the office of the register of deeds in the county of Alpena, Michigan, in liber A of mortgages, on pages 297, 298, 299, & 300, as by the record of said indenture of mortgage now remaining in said office of the county of Alpena, and as by the certificate of A. Hopper, Esq., register of said county at the time last mentioned endorsed on the said indenture of mortgage, and signed by the said A. Hipper, register, sufficiently appears, and to which said record and certificate thereof your orators for greater certainty pray leave to refer.

And your orators further show unto the court that the said bond and the said indenture of mortgage in this your orators' bill hereinbefore mentioned and set forth were given by the said David D. Oliver and Sarah Ann Oliver, his wife, in order to secure the payment of the said sum of thirty-five thousand dollars, which was part of the purchase-money agreed to be paid said David D. Oliver for the lands and premises in said mortgage set forth and described.

And your orators further shew unto your honor that on the second day of September, eighteen hundred and sixty-eight, the said Henry S. Cunningham duly assigned by instrument in writing for that purpose made — executed all his right, title, and interest in and to

[illegible] and Jacob Eschle-
[illegible] the sole owners
[illegible] acknowledged, and on the
[illegible] of January, [illegible] duly recorded in the register's office for
[illegible] of Alpena, in liber A of mortgages, on page 674, as ap-
[illegible] the certificate of the register, A. Hopper, which is duly
[illegible] on the back of said instrument of assignment.

[illegible] your orators further shew unto the court that there is now
[illegible] due and unpaid on the said bond said indenture of mortgage
[illegible] the sum of thirty-five thousand dollars, principal and inter-
[illegible] est, from and after one year subsequent to the date thereof.

And your orators further shew unto the court that for the pay-
[illegible] of so much money as is now due and owing from the said
[illegible] D. Oliver and wife to your orators upon the said bond and
[illegible] of mortgage, your orators, or some person in their stead
[illegible] have frequently and in a friendly manner applied to
[illegible] David D. Oliver, Sarah Ann Oliver, and the other parties,
[illegible] hereto hereinafter named, or to some of them, which
[illegible] applications have been wholly unsuccessful, and your orator
[illegible] been greatly delayed and disappointed in the receipt of the said
[illegible] of money, by means of which said premises the said indenture
[illegible] mortgage and bond have become forfeited at law, and the estate
[illegible] and granted by the said indenture of mortgage has become
[illegible] in your orators, subject only to the equity of redemption in
this honorable court.

And your orators further shew unto the court and expressly charge
that the said mortgaged premises are a slender and scanty security
for the payment of the principal and interest moneys so due to your
orator as aforesaid, and that no proceedings at law have been had
for the recovery or collection of the debt or moneys secured to be
paid by the said bond and indenture of mortgage, or for the recov-
ery or collection of any part thereof; and that the said debt or
moneys and no part thereof have been collected or paid.

And your orators further shew unto the court that they have
[illegible] examinations to be made of the record of deeds and mort-
[illegible] in the office of the register of the county of Alpena, where
[illegible] mortgaged premises are situated, and from which said several
[illegible] it appears, and your orators expressly charge the
[illegible] J. Robinson, Calvin Haines, Philip M. Ranney, and
[illegible] have, or claim to have, rights and interests
[illegible] described in the said indenture or mortgage or in
[illegible] thereof, as subsequent purchasers or incum-
[illegible]

[illegible] well hoped that the said David D. Oliver and
[illegible] would have complied with the reasonable request
[illegible] and would have paid to your
[illegible] moneys so as aforesaid due and
[illegible] said bond and indenture of mort-
[illegible] have released their equity of
[illegible] premises, or any part
[illegible] the same from

all liens, incumbrances, titles, or conveyance which they have or held, claimed or pretended to have, subsequent to the date of said indenture of mortgage, so that your orators' estate therein might have become perfect and complete, as in equity and good conscience they ought to have done; but now so it is, may it please the court, that the said David D. Oliver and Sarah Ann Oliver, combining and confederating with divers persons at present unknown to your orators, but whose names, when discovered, your orators pray may be inserted herein, with apt and proper words, to charge them, as parties hereto, how to wrong and injure your orators and to delay them in the collection and defraud them of the principal and interest moneys so as aforesaid due from said David D. Oliver and wife to your orators upon the said bond and indenture of mortgage, as aforesaid, have hitherto, under various false and frivolous pretences and excuses, wholly neglected and refused to pay the said moneys so due, as aforesaid, to your orators. All which pretences and 2555 excuses, neglects, and refusals are contrary to equity and good conscience, in tender consideration whereof and for as much as your orators have not a complete and safe remedy in the premises, at and by the strict rules of the common law, and are only fully relievable in a court of equity, where matters of this nature are properly cognizable and relievable; nor can your orators foreclose the equity of redemption of the said mortgaged premises, nor safely sell the same for the payment and satisfaction of the principal and interest moneys so as aforesaid due from said David D. Oliver and wife to your orators on the said bond and indenture of mortgage, in the manner aforesaid, without the aid and assistance of this honorable court.

To the end, therefore, that the said defendants may, if they can, shew why your orators should not have the relief hereby prayed, and may, their several and respective corporal oaths being hereby waived, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the allegations herein contained, and especially answer whether such bond and mortgage were not executed and delivered as herein contained; and whether the same does not still remain due and unpaid to the extent and in the amount herein stated, and that they may come to a fair and just account touching the amount due and to become due to your orators upon the said bond and indenture of mortgage hereinbefore mentioned and set forth, and that they or some of them may be decreed to pay forthwith to your orators the amount which shall be found to be due to them thereon, and the interest thereon, together with your orator's reasonable costs and charges in this behalf sustained. And in default thereof that the defendants herein named, and each of them, and all persons claiming or to claim from or under them, or either of them, may be foreclosed and barred of and from all equity of redemption and claim of, in, and to said mortgaged premises and every part and parcel thereof, with the appurtenances, and that all and singular the said mortgaged premises, with the appurtenances, may be sold by the order and decree and under the direction of this

honorable court, and the moneys arising from the sale thereof, so far [set] forth as shall be necessary, or so far as the same shall extend, be applied towards satisfying to your orators the full amount of the moneys so as aforesaid secured in and by the said bond and indenture of mortgage, both principal and interest, if the whole shall then be due and unpaid, or if the whole amount shall not be then due, that such part of the said mortgaged premises as may be necessary to discharge the principal and interest moneys then found to be due to them thereon and unpaid, together with your orators' reasonable costs and charges, may be sold as aforesaid, and the proceeds to be applied thereto as aforesaid; or in case it shall appear to this honorable court that the said mortgaged premises are so situated that the sale of the whole will be most beneficial to the parties concerned, that then the whole of the said mortgaged premises, with the appurtenances, may be sold as aforesaid, and the proceeds of such sale be applied as well to the discharge of the principal and interest moneys then due, and your orators' costs and charges, as towards the whole or residue of the amount secured by the said bond and indenture of mortgage, and not due and payable at the time of such sale, so that this honorable court may direct the balance of the proceeds of such sale after paying the sum due upon the said bond and indenture of mortgage with your
2556 orators' costs and charges, to be put out at interest under the direction of this honorable court, for the benefit of your orators, to be paid to them as the remainder of said principal and interest moneys shall become due and payable, and the surplus, if any, for the benefit of the said David D. Oliver and Sarah Ann Oliver, and that the said David D. Oliver, Sarah Ann Oliver, George J. Robinson, Calvin Haines, Philip M. Ranney, and Henry S. Cunningham, and all persons claiming and to claim under them or either of them, or who have come into possession of the said mortgaged premises, or any part or portion thereof, during the pendency of this suit, deliver and yield up possession thereof to your orator, or to whomsoever shall become the purchaser or purchasers thereof at the said sale, on his or her or their producing to him or them, or to the person or persons in possession of the said mortgaged premises, or any part thereof, the deed or deeds executed by the master pursuant to said sale as aforesaid, and a certified copy of the order confirming the report of such sale, after such order has become absolute; and that the said David D. Oliver pay to your orators any balance that shall remain due to your orators of the principal and interest of said bond and indenture of mortgage, if the sale of said mortgaged premises, as aforesaid, fail to produce sufficient to pay the whole of said mortgaged debt, and the costs of this suit, and that, in such case, your orators have execution for the collection of such balance and the costs thereon, according to the rules and practice of this court, or that your orators may have such other relief or such further relief in the premises as shall be agreeable to equity and good conscience.

May it please the court, the premises being considered, to grant to your orators the most gracious writ of subpœna, to be issued out of and under the seal of this honorable court, to be directed to the

said David D. Oliver, Sarah Ann Oliver, George J. Robinson, Calvin Haines, Philip M. Ranney, and Henry S. Cunningham, therein and thereby commanding them and each of them, on a certain day and under a certain penalty, to be therein inserted, personally to be and appear before this honorable court, then and there to answer all and singular the said premises, and to stand and to abide and perform such order and decree therein as this honorable court shall make therein, and as shall be agreeable to equity and good conscience. And your orators will ever pray, &c.

GARRET B. HUNT,
JACOB ESCHLEMAN,
Complainants.

By D. B. & H. M. DUFFIELD,
Their Solicitors.

D. B. & H. M. DUFFIELD,
Sol's for Compl'ts.

STATE OF MICHIGAN, } ss:
Wayne County, }

D. Bethune Duffield, of the city of Detroit, county and State aforesaid, being duly sworn, deposes and says that the above-named complainants are now residents of the State of Michigan, & for this reason this bill is signed with their names by this deponent, who, as one of their solicitors, has been duly authorized so to do, and further saith not.

D. BETHUNE DUFFIELD.

Sworn to & subscribed before me, this 5th day of April, 1869.
HENRY H. SWAN,
Notary Public, Wayne County, Michigan.

Endorsed: No. 1381. Circuit court of the United States for the eastern district of Michigan. In chancery. Garret B. Hunt & Jacob Eschelman, compl'ts, *vs.* David D. Oliver, Sarah Ann Oliver, George J. Robinson, Calvin Haines, Philip M. Ranney & Henry S. Cunningham, defendants. Foreclosure bill. Filed in clerk's office April 8th, 1869. Jno. Winder, clerk.

2557–2573 [Return on subpœna, precipe for appearance subpœna, appearance, demurrer & answer omitted per stipulation of counsel.]

2574 SCHEDULE "A."

Descriptions of Lands Mortgaged by David D. Oliver and his Wife to Hunt, Cunningham and Eschelman.

Fractions of sections.	Sec.	Town.	Range
N w q'r n w q'r of s w q'r e h'f of s w q'r	21	29 N.	8 E.
E h'f of	21	29	8
N h f and n w q'r of s w q'r e h'f of s e q'r	22	29	8
W h'f of n w q'r and s w q'r	23	29	8

Fractions of sections.	Sec.	Town.	Range.
W h'f of n w q'r	25	29	8
E h'f of n e q'r s w ¼ of n w ¼ and s w ¼	26	29	8
W h'f of s e q'r and s e ¼ of s e ¼	26	29	8
W h'f of n e q'r s e q'r of n e q'r s e q'r	27	29	8
E h'f	34	29	8
N w q'r s h'f of s w q'r and e h'f	35	29	8
S h'f of s w q'r	36	29	8
W h'f	27	29	8
E h'f of n w q'r s h'f of s w q'r and e h'f	28	29	8
E h'f of n e q'r	32	29	8
N h'f of n'e q'r and n w q'r	33	29	8
Undivided two-thirds of n e q'r and e h'f of n w q'r and s h'f	8	29	8
W h'f of n w q'r and w h'f of s w q'r	9	29	8
Entire section	17	29	8
Also the whole of the following:			
S e q'r of s e q'r	7	29	7
E h'f of n w q'r e h'f of s e q'r and s w q'r of s w q'r	8	29	7
W h'f of s e q'r	8	29	7
2575 N w q'r of n e q'r	17	29	7
N w q'r n w q'r of s w q'r	17	29	7
N e q'r of n e q'r	18	29	7
S frac. h'f	12	29	8
S h'f of	11	29	8
N h'f of n e q'r w h'f of n w q'r w h'f of s w q'r	14	29	8
N e q'r s h'f of n w q'r and s h'f	15	29	8
N w frac. q'r n e q'r of s w frac. q'r and e h'f	19	29	8
Entire section	20	29	8
S w q'r of n e q'r n w frac. and s w q'r	4	28	8
S w q'r of n w q'r and s h'f	5	28	8
E h'f	6	28	8
E h'f of n e q'r n w q'r of n e q'r	7	28	8
N h'f of n w q'r and e h'f	8	28	8
N h'f	9	28	8
S w q'r and n w q'r of s e q'r	9	28	8
Entire section	10	28	8
N h'f of s e q'r s e q'r of s e q'r n h'f of s w q'r	11	28	8
S w q'r of s w q'r	11	28	8
Lots 1, 2, and 3	2	29	8
S e q'r of n e q'r	7	29	8
E h'f of s w q'r n w q'r of s w q'r	5	29	8
N w q'r of s e q'r	5	29	8
S w q'r of s w q'r	12	28	8
W frac. h'f of n w frac. q'r	5	29	8
E frac. h'f of n e frac. q'r s w q'r of n e q'r	6	29	8
S e q'r of n w q'r w h'f of s e q'r	6	29	8
W h'f of n e q'r	7	29	8

SCHEDULE "B."

Description of Lands Held Under Contract from David Preston.

Fractions of sections.	Sec.	Town.	Range
W h'f of s w q'r	1	28	8
S h'f	2	28	8
S e q'r w frac. h'f of n w q'r	3	28	8
S e q'r e frac. h'f of n e q'r	4	28	8
N w frac. q'r of n e q'r n e q'r of n w q'r	4	28	8
N frac. h'f of n e q'r s w q'r of n e q'r	5	28	8
N frac. h'f of n w q'r	5	28	8
N e frac. q'r of n e q'r	6	28	8
N h'f	11	28	8
S w q'r of n w q'r	4	29	8
S w q'r of n e q'r e frac. h'f of n w q'r	5	29	8
S h'f of s e q'r s w q'r of s w q'r	6	29	8
N w q'r of n e q'r s w frac. q'r of n w frac. q'r	6	29	8
S e q'r of s e q'r n frac. h'f of n w frac. q'r	6	29	8
N e q'r of n e q'r	7	29	8
W h'f of n w q'r	28	29	8
N e q'r of n e q'r	30	29	8
S h'f of s e q'r	30	29	8
W h'f of n e q'r s e q'r of s e q'r	32	29	8
S h'f of s w q'r w h'f of s e q'r	32	29	8
S h'f	33	29	8
2576 W h'f of s w q'r s e q'r of s w q'r	34	29	8
W h'f of n w q'r n e q'r of s w q'r	36	29	8
W h'f of s e q'r s e q'r of s e q'r	7	29	8
N h'f of s e q'r and s w q'r of s e q'r	36	29	8
W h'f of n. w q'r	8	29	8
E h'f of n e q'r n w q'r of n e q'r	10	29	8
N w q'r of s w q'r	10	29	8
W h'f of n w q'r	11	29	8
E frac. h'f of n e q'r	13	29	8
N h'f of n w q'r n h'f of s w q'r	13	29	8
S h'f of s w q'r s w q'r of s e q'r	22	29	8
S w q'r of n e q'r e h'f of n w q'r	26	29	8

SCHEDULE "C."

Statement of the Lands Conveyed to George J. Robinson.

Fractions of sections.	Sec.	Town.	Range.
An undivided one-quarter of—			
S w q'r of n e q'r n e frac. q'r of n. w q'r	4	28 N.	8 E.
S h'f of n w q'r and n w q'r	4	28	8
S w q'r of n w q'r and s h'f	5	28	8
N w frac. q'r of n e q'r s h'f of n e q'r and s e q'r	6	28	8
N h'f of n e q'r s e q'r of n e q'r	7	28	8
N h'f of n w q'r and e h'f	8	28	8
N h'f s w q'r and n w q'r of s e q'r	9	28	8

Fractions of sections.	Sec.	Town.	Range.
Entire section	10	28	8
N h'f of s e q'r n e q'r of s e q'r n h'f of s w q'r	11	28	8
S w q'r of s w q'r	11	28	8
S w q'r of n w q'r	12	28	8
N w frac. q'r n frac. h'f of s w frac. q'r	2	29	8
N w q'r of s e q'r s e q'r of s e q'r	3	29	8
W frac. h'f of n w q'r n h'f of s e q'r	5	29	8
S e q'r of s w q'r n w q'r of s e q'r	5	29	8
E h'f of n e q'r s w q'r of n e q'r	6	29	8
S e q'r of n w q'r and w h'f of s e q'r	6	29	8
N e q'r of s e q'r s w frac. q'r of s w frac. q'r	6	29	8
W h'f of n e q'r s e q'r of n e q'r	7	29	8
S w frac. q'r of n w q'r	7	29	8
S w q'r of n e q'r, n w q'r, e h'f of s e q'r	10	29	8
S w q'r of s e q'r	10	29	8
E h'f of n w q'r n e q'r of s w q'r s e q'r	11	29	8
E frac. h'f of n e frac. q'r	11	29	8
Entire frac. section	12	29	8
N h'f of n e q'r w h'f of s w q'r w h'f of n e q'r	14	29	8
N e q'r, s h'f of n w q'r, s h'f	15	29	8
E h'f n w fraction q'r n e q'r of s w q'r	19	29	8
Entire section	20	29	8
Entire section	21	29	8
N h'f n w q'r of s w q'r e h'f of s e q'r	22	29	8
E h'f of n e q'r w h'f of n w q'r s w q'r	23	29	8
E h'f of s e q'r	23	29	8
W h'f of n w q'r s w q'r of s w q'r	25	29	8
E h'f of n e q'r w h'f of n w q'r and s h'f	26	29	8
Entire section	27	29	8
E h'f e h'f of n w q'r s h'f of sw q'r	28	29	8
E h'f of n e q'r	32	29	8
2577 N h'f of n e q'r and n w q'r	33	29	8
E h'f	34	29	8
N h'f s h'f of s w q'r and s e q'r	35	29	8
S h'f of s w q'r	36	29	8
An undivided quarter of an undivided two-thirds of the following:			
E h'f e h'f of n w q'r and s w q'r	8	29	8
W h'f of n w q'r and w h'f of s w q'r	9	29	8
Entire section	17	29	8

SCHEDULE "D."

Description of Land Conveyed to Henry S. Cunningham by David D. Oliver by Warranty Deed, dated September 3, 1868.

Fractions of sections.	Sec.	Town.	Range.
Lot No. 2	10	30 N.	8 E.
W h'f of n e q'r, s e q'r of n e q'r n e q'r of s e q'r	21	30	8
Fractional section	15	30	8

Fractions of sections.	Sec.	Town.	Range.
Lots 2, 3, 4, and 5	22	30	8
Fractional section	35	30	8
S e q'r of s e q'r	32	30	8
Lots 2 and 3	33	30	8
S e q'r of s w q'r	34	30	8
E frac. h'f of n e frac. q'r	3	28	9
N e q'r of n e q'r	34	29	9
N frac. h'f of n w frac. q'r	35	29	9
S e q'r of se q'r	11	29	6
N w q'r of s e q'r	11	29	7
N e q'r of se q'r	19	32	7
N e q'r of n w q'r	23	31	8
S e q'r of s e q'r	15	31	8
Lots 1, 4, 5, and n w q'r of n w frac. q'r	21	31	8
Lots 1 and 2	20	31	8
S w q'r of n e q'r s w q'r of s w q'r e h'f of s w q'r and s w q'r of s e q'r	28	31	8
W h'f of n w q'r	33	31	8
S e q'r of n e q'r	22	31	8

The undivided one-half of the following:

E h'f of s e q'r	28	31	8

SCHEDULE "E."

Description of Lands Conveyed to Henry S. Cunningham by David D. Oliver and Wife by Warranty Deed, dated September 3, 1868.

An undivided three-fourths interest in the following:

Fractions of sections.	Sec.	Town.	Range.
S w q'r of n e q'r n w frac. q'r of n w q'r s h'f of n w q'r and s w q'r	4	28 N.	8 E.
S w q'r of n w q'r and s h'f	5	28	8
N w frac. q'r of n e q'r s h'f of n e q'r and s e q'r	6	28	8
N h'f of n e q'r s e q'r of n e q'r	7	28	8
N h'f of n w q'r e h'f	8	28	8
N e q'r n w q'r of n e q'r and w h'f	9	28	8
Entire	10	28	8
N h'f of s e q'r s e q'r of s e q'r n h'f of s w q'r s w q'r of s w q'r	11	28	8
S w q'r of s w q'r	12	28	8
Lots 1, 2, and 3	2	29	8
N w q'r of s e q'r s e q'r of se q'r	3	29	8
2578 N w q'r of s e q'r w frac. h'f of n w frac. q'r e h'f of s w q'r n w q'r of s w q'r	5	29	8
E h'f of n e q'r	6	29	8
S w q'r of n e q'r s e q'r of n e q'r s w frac. q'r of s w q'r	6	29	8
W h'f of s e q'r n e q'r of s e q'r	6	29	8

Fractions of sections.	Sec.	Town.	Range.
N w frac. q'r of n w frac. q'r w h'f of n e q'r s e q'r of n e q'r	7	29	8
Lot 2, e h'f of s w q'r s e q'r	11	29	8
Fractional section	12	29	8
N h'f of n e q'r w h'f of n w q'r w h'f of s w q'r	14	29	8
S h'f of n e q'r s h'f of n w q'r and s h'f	15	29	8
N w q'r n e q'r of s w q'r and e h'f	19	29	8
Entire	20	29	8
Entire	21	29	8
N h'f n w q'r of s w q'r e h'f of s e q'r	22	29	8
S h'f of n w q'r n w q'r of n w q'r s w q'r	23	29	8
W h'f of n w q'r s w q'r of s w q'r	25	29	8
E h'f of n e q'r w h'f of n w q'r s h'f	26	29	8
Entire	27	29	8
E h'f of n w q'r s h'f of s w q'r e h'f of n w q'r s h'f of s w q'r and e h'f	28	29	8
E h'f of n e q'r	32	29	8
N h'f of n e q'r and n w q'r	33	29	8
E h'f	34	29	8
S e q'r s h'f of s w q'r and n h'f	35	29	8
S h'f of s w q'r	36	29	8
An undivided three-quarters interest in a two-thirds interest in the following:			
E h'f of n w q'r s w q'r and e h'f	8	29	8
W h'f of n w q'r w h'f of s w q'r	9	29	8
Entire	17	29	8

SCHEDULE "F."

Description of Lands Conveyed to Henry S. Cunningham by David D. Oliver and Wife by Warrant Deed, Dated September 3, 1868.

Fractions of sections.	Sec.	Town.	Range.
N e q'r of s w q'r	22	30 N.	8 E.
N h'f of s w q'r	35	30	8
N e q'r of s e q'r	35	30	8
Lots 2 and 4, s h'f of n w q'r s h'f of s w q'r	27	30	8
S w q'r of n e q'r s h'f of n w q'r, lot 2	34	30	8
N e q'r of s e q'r	17	32	7
S e q'r of n e q'r	18	32	9
Lots 6 and 7, n e q'r of n w q'r s w q'r of n e q'r n e q'r of n e q'r	21	30	8

SCHEDULE "G."

Description of Lands Conveyed to Henry S. Cunningham by David D. Oliver and Wife by Warranty Deed, Dated September 3, 1868.

Lots 7, 8, 9, 10, 11, and frac. 12 of block 2; frac. block Nos. 3, 4, and 5; Oliver's additions to village of Alpena.

Endorsed: No. 1381. U. S. circuit court, east. dist. of Michigan.

In chancery. Garret B. Hunt & *al. vs.* David D. Oliver & *al.* Answer of David D. Oliver & Sarah Ann Oliver, his wife. Filed in clerk's office Sept. 37th, 1868. Jno. Winder, d'p. clerk.

2579–2586 [Exceptions to answer, order of reference on exceptions, report of master on exceptions, replication to answer, precipe for appearance of substituted solicitors, order for substitution of solicitors, & order extending time to take proofs & for reference, omitted per stipulation of counsel.]

2587 EXHIBIT "A."

Proofs and Master's Report of Amount Due.

J. J. Speed, master in chancery.

Know all men by these presents, that I, David D. Oliver, of the town of Alpena, county of Alpena and State of Michigan, *are* held and firmly bound unto Garret B. Hunt, Henry S. Cunningham, and Jacob Eschleman, of Clarence, Erie county, New York, in the sum of seventy thousand dollars, lawful money of the United States of America, to be paid to the said Garret B. Hunt, Henry S. Cunningham, and Jacob Eschleman, their executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with my seal; dated the seventeenth day of November, one thousand eight hundred and sixty-six.

The condition of the above obligation is such that if the above-bounden David D. Oliver, his heirs, executors, or administrators shall well and truly pay, or cause to be paid, unto the above-named Garret B. Hunt, Henry S. Cunningham, and Jacob Eschleman, their executors, administrators, or assigns, the just and full sum of thirty-five thousand dollars in manner following, that is to say, five thousand dollars thereof on the first day of July, 1867; ten thousand dollars thereof on the first day of October, 1867; five thousand thereof on the first day of July, 1868; five thousand dollars thereof on the first day of October, 1868; five thousand dollars thereof on the first day of July, 1869, and five thousand dollars thereof on the first day of October, 1869, with annual interest on the whole sum from time to time unpaid, to be paid on the first day of October in each and every year, the first payment of interest to be made October 1st, 1867, with the privilege to said Oliver of paying said principal sums at any time sooner in sums not less than fifteen hundred dollars at a time, without any fraud or delay, then the above obligation to be void, otherwise to remain in full force and virtue.

And it is hereby expressly agreed that, should any default be made in the payment of the said interest or principal, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrears for the space of thirty days, then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of

thirty-five thousand dollars, with all arrearage of interest thereon, shall, at the option of the said Hunt, Cunningham, and
2588 Eschleman, or their legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

DAVID D. OLIVER. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Endorsed: Date, April 2nd, 1868; amount, $2,450—int. to Nov. 17, 1867; interest, $2,450.

EXHIBIT "B."

J. J. Speed, master in chancery.

Inter. revenue 20 ct. stamp. D. D. O. & S. A. O. Jan'y 30, 1867.

United States 15 ct. st'p. D. D. O. & S. A. O. Jan'y 30, 1867. Inter. revenue.

This indenture, made the seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, between David D. Oliver, of the town of Alpena, county of Alpena and State of Michigan, and Sarah Ann, his wife, party of the first part, and Garret B. Hunt, Henry S. Cunningham, and Jacob Eschleman, of the town of Clarence, county of Erie and State of New York, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of thirty-five thousand dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, released, enfeoffed, and confirmed, and by these presents do grant, bargain, sell, release, enfeoff, and confirm unto the said party of the second part, and to their heirs and assigns forever, all those tracts or lots of land lying in the county of Alpena, in the State of Michigan, and particularly described, according to the Government survey thereof, as follows, viz: In township twenty-nine north, range eight east, three thousand acres, namely: In section twenty-one, the northwest quarter, the northwest quarter of the southwest quarter, the east half of the southwest quarter, and the east half of the section; in section twenty-two, the north half of the section, the northwest quarter of the southwest quarter, and the east half of the southeast quarter; in section twenty-three, the west half of northwest quarter and the southwest quarter; in section twenty-five, the west half of the northwest quarter; in section twenty-six, the east half of the northeast quarter, the southwest quarter of the northwest quarter, the southwest quarter, the west half of the southwest quarter, and the southeast quarter of the southeast quarter; in section twenty-seven the west half of the northeast quarter, the southeast quarter of the northeast quarter, and the southeast quarter; in section thirty-

four, the east half of the section; in section thirty-five the northwest quarter, the south half of the southwest quarter
2589 and the east half of the section; in section thirty-six the south half of the southwest quarter, the lands and premises above described being the same lands and premises conveyed by the Saint Mary's Ship Canal Company to said Garret B. Hunt and others by deed dated October 1st, 1863, and recorded in the register's office of Alpena county, in liber B of deeds, on pages twenty-nine, thirty, and thirty-one; also all those tracts or lots of land lying in the county of Alpena, and State aforesaid, and more particularly described, according to the Government survey thereof, as follows, namely: In section twenty-seven the west half of the section; in section twenty-eight the east half of the northwest quarter, the south half of the southwest quarter, and the east half of the section; in section thirty-two the east half of the northwest quarter; in section thirty-three the north half of the northeast quarter and the northwest quarter, all in township twenty-nine north, of range eight east, containing eleven hundred and twenty acres, the lands and premises above described being the same lands and premises conveyed by the Saint Mary's Falls Ship Canal Company to the said Garret B. Hunt and others by deed dated October 1st, 1863, and recorded in the register's office of Alpena county, in liber B of deeds, on pages twenty-seven and twenty-eight, the above tracts or parcels of lands containing in all four thousand one hundred & twenty acres, more or less, according to the returns of the surveyor-general.

Also the undivided two-thirds part of all those certain tracts or lots of land lying in said county [of] Alpena, being part of seven hundred and fifty thousand acres of land patented on the 25th day of May, 1855, by the State of Michigan to the Saint Marys Falls Ship Canal Company, and more particularly described, according to the Government survey thereof, as follows, viz: In township twenty-nine north, range eight east, thirteen hundred and sixty acres, to wit: in section eight the northeast quarter and the east half of the northwest quarter and the south half of the section; in section nine the west half of the northwest quarter and the west half of the southwest quarter; also all of section seventeen; also all those other tracts or lots of land, being part of said seven hundred and fifty thousand acres of land, situate in said county of Alpena, and more particularly described, according to the Government survey thereof, as follows, viz: the southeast quarter of the southwest quarter of section seven; the east half of the northwest quarter and the east half of the southwest quarter and the southwest quarter of the southwest quarter and the west half of the southeast quarter of section eight; the northwest quarter of the northeast quarter of section seventeen; also, in the same section, the northwest quarter and northwest quarter of the southwest quarter; in section eighteen the northeast quarter of the northeast quarter, all in township twenty-nine north, of range seven east, and containing six hundred acres; also all those other tracts or parcels of land in township twenty-nine (29) north, of range eight (8) east, and described as follows: south fraction. half of section twelve, containing two hundred twenty-seven $\frac{5}{100}$ acres, more or

less, with the saw-mill and other improvements thereon; south half of section eleven, three hundred and twenty (320) acres; the north half of the northeast quarter, the west half of northwest
2590 quarter and west half of southwest quarter of section fourteen, and the northeast quarter, the south half of northwest quarter and the south half of section fifteen, containing eight hundred acres; also the northwest fractional $\frac{1}{4}$, the northeast quarter of the southwest fractional quarter, and east half of section nineteen and the entire section twenty (20), containing one thousand one hundred and fifty-four $\frac{90}{100}$ acres, more or less, according to the Government surveys in Michigan; also all those lots or tracts of lands in township twenty-eight (28) north, of range 8 east, described as follows: Southwest quarter of northeast quarter, northwest fractional quarter and southwest quarter of section four (4), the southwest quarter of northwest quarter and south half of section five (5), the east half of section six (6), the east half of northeast quarter and northwest quarter of northeast quarter of section seven (7), the north half of northwest quarter and east half of section eight (8), the north half of section nine and the southwest quarter and the northwest quarter of southeast quarter of section nine (9), the entire section ten (10), the north half of southeast quarter, the southeast quarter of southeast quarter, the north half of southwest quarter, and southwest quarter of S. W. $\frac{1}{4}$, section eleven (11), containing in all two thousand nine hundred and ninety-three $\frac{84}{100}$ acres, more or less, according to the returns of the surveyor general; also the following lands: Lots one, two, and three of section two, and southeast quarter of northeast quarter of section seven, and the east half of southwest quarter and northwest quarter of southwest quarter and northwest quarter of southeast quarter of section five, all in township twenty-nine north, of range eight east, containing two hundred acres, more or less; also all the following lands, described as follows: Southwest quarter of southwest quarter of section twelve, in township twenty-eight (28) north, of range eight (8) east, forty acres; also the following-described lands: West frac. half of northwest frac. quarter, eighty $\frac{47}{100}$ acres of section five (5), east fr'l half of northeast fr'l quarter and southwest quarter of northeast quarter and southeast quarter of northwest — and west half of southeast quarter of section six, and west half of northeast — of section seven, all in township twenty-nine (29) north, of range eight (8) east, this mortgage being given to secure the purchase-money of the six thousand and eighty acres first above described; to have and to hold the above-bargained premises to the said party of the second part, their heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, their heirs and assigns, forever; provided always, and these presents are upon the express condition, that if the said David D. Oliver, his heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, to the said party of the second part, their heirs, executors, administrators, or assigns, the just and full sum of thirty-five thousand dollars, in manner following, viz., five thousand thereof July 1st, 1867, ten thousand dollars thereof October 1st, 1867, five thousand dollars thereof July 1st, 1868, five thousand dollars there-

of October 1st, 1868, five thousand dollars thereof July 1st, 1869, and five thousand dollars thereof October 1st, 1869, with annual interest on the whole sum from time to time un[til] paid, to be paid
2591 on the first day of October in each and every year, and with the privilege of paying said principal sums at any time sooner in sums not less than fifteen hundred dollars at a time, according to the condition of a certain bond or writing obligatory, bearing even date herewith, executed by the said party of the first part to the said party of the second part, then these presents and the said bonds or writing obligatory shall cease and be null and void; but in case of non-payment of the said sum of thirty-five thousand dollars, or of the interest thereof, or any part thereof, at the above time limited for the payment thereof, or as provided in said bond, then and in said case it shall and may be lawful for the said party of the second part, their heirs, executors, administrators, or assigns, and the said party of the first part do hereby empower and authorize the said party of the second part, their heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, or any part thereof, with the appurtenances, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his or their heirs and assigns, forever, good, ample, and sufficient deed or deeds of conveyance in the law, pursuant to the statute in that case made and provided, rendering the surplus money, if any there shall be, to the said party of the first part, their heirs, executors, or administrators, after deducting the principal and interest moneys due as as aforesaid, and the costs and charges of such vendue and sale aforesaid.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first before mentioned.

DAVID D. OLIVER. [SEAL.]
SARAH A. OLIVER. [SEAL.]

Signed, sealed, and delivered in presence of—
G. B. MELVILLE.
G. W. HAWKINS.

STATE OF MICHIGAN, } ss:
County of Alpena, }

On this twenty-fourth day of December, in the year one thousand eight hundred and sixty-six, before me, the subscriber, a notary public for said county, personally appeared David D. Oliver & Sarah Ann Oliver, his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed; and the said Sarah Ann, wife of the said David D. Oliver, on a private examination by me, separate and apart from her said husband, acknowledged that she executed the same freely and without any fear of or compulsion from any one.

G. B. MELVILLE,
Notary Public for Alpena Co., Michigan.

STATE OF MICHIGAN, } ss:
County of Alpena, }

On this 30th day of January, A. D. 1867, before me, the subscriber, a notary public for said county, personally appeared David D. Oliver and Sarah Ann Oliver, his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and
2592 deed; and the said Sarah Ann, wife of the said David D. Oliver, on a private examination by me, separate and apart from her said husband, acknowledged that she executed the same freely and without any compulsion from any one.

G. B. MELVILLE,
Notary Public for Alpena County, Mich.

Endorsed: David D. Oliver and wife to Garret B. Hunt, Henry S. Cunningham, and Jacob Eschleman. Mortgage. Register's office, Alpena county. Received for record Jan. 31st, A. D. 1867, at 10¼ o'clock a. m., and recorded in liber A of mortgages, on pages 297, 298, 299, 300. A. Hopper, register.

In Cir. C't of the U. State for Eastern District of Michigan. In Ch'y.

GARRET B. HUNT *et al.*, Compl'ts,
vs.
DAVID D. OLIVER *et al.*, Def'ts. } File No. 1381.

In this cause, on motion of complainants, by D. B. & H. M. Duffield, their solicitors, it is ordered that the time for taking testimony therein be extended two months from this date, and on like motion it is further ordered that it be referred to John J. Speed, Esq., one of the masters of this court, as examiner, to take proof in said cause, under rule 67 of this court, and to ascertain and compute the amount due upon the bond and mortgage described in the bill of complaint in this cause, and report the same with all convenient speed to the court.

July 12, 1870.

[SEAL.] ——— ———.

I hereby certify the foregoing to be a true copy of the original order as filed in — above cause July 12th, 1870.

A. MANDELL, *Clerk.*

UNITED STATES OF AMERICA, } ss:
Eastern District of Michigan, }

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

GARRET B. HUNT & JACOB ESCHLEMAN, Compl't,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, HENRY S. CUNNINGHAM, George J. Robinson, Calvin Haines, & Philip M. Ranney, Defendants.

Testimony taken before John J. Speed, master in chancery and examiner, in the above cause, on the part of the complainants, August 20th, 1870, 10 o'clock a. m. Mr. D. B. Duffield ap-
2593 peared on part of complainants. Wm. John, Jr., appeared for def'ts.

Complainants offer in evidence, and asks that they may be made exhibits herein, the following:

1st. A bond made by David D. Oliver to Garret B. Hunt, Henry S. Cunningham, & Jacob Eschleman, dated November 17th, 1866.

2nd. A mortgage made by David D. Oliver & wife to Hunt, Cunningham & Eschelman to secure payment of above-mentioned bond.

3rd. An assignment from Henry S. Cunningham to Garret B. Hunt & Jacob Eschleman of above bond and mortgage.

Defendant's counsel objects to above papers being given in evidence, and to any computation being made of amount due thereon.

The above-mentioned bond, mortgage, and assignment are hereto annexed, and marked respectively Exhibits "A," "B," & "C."

Defendant's counsel also here objects to any and all of the proceedings now here taken and to be taken before the master and examiner.

Complainants' counsel then offered D. Bethune Duffield as a witness for complainant-, who, being duly sworn, deposes and says: That he has computed the amount due upon the bond and mortgage above mentioned; that the amount due upon said bond and mortgage for principal is thirty-five thousand dollars, and for interest from November 17th, 1867, to August 20th, 1870, being a period of two years, nine months, and three days, at seven per cent., six thousand seven hundred and fifty-seven & $\frac{84}{100}$ dollars, which, added to the principal mentioned above, makes an aggregate of forty-one thousand seven hundred and fifty-seven dollars and eighty-four cents ($41,757.84.)

D. BETHUNE DUFFIELD.

Subscribed & sworn to before me this 20th day of August, 1870.
JOHN J. SPEED,
Master in Chancery, Eastern District of Michigan and Examiner in above Cause.

I, John J. Speed, master in chancery of said court and examiner

in above cause, do certify that by virtue of an order of this court made in the above-entitled cause, dated the 12th day of July, 1870, by which it was referred to me to take proofs in said cause under rule 67, & to ascertain & compute the amount due upon the bond mortgage described in this bill in this cause, I, the subscriber, on the 12th day of July, 1870, in pursuance of the 67th rule in equity, made an order fixing five days as reasonable time for giving notice by either party to the others of the taking of testimony herein, and directed that such notice be given accordingly. Said order is hereto annexed. On the 12th day of August, 1870, I issued, at request of complainants, a summons to defendants requiring them to appear before me to attend to the computation of amount due on the bond & mortgage set forth in the bill of this cause. Proof of service of such summons is hereto annexed, and also proof of service of notice of taking of testimony on part of complainants before me. On the 20th day of August, 1870, I proceeded, in pursuance of said order of this court and of the notice aforesaid, to take testimony on part of complainants at my office in the city of Detroit, and which said testimony is set forth above, and immediately thereafter, in pursuance of said order of the court and of said summons, I proceeded to ascertain and compute the amount due upon said bond and
2594 mortgage, and I do thereupon report that I have computed the amount due to complainants therein, and that there is due to the complainants as aforesaid, for principal and interest up to and including the date of this report, the sum of forty-one thousand seven hundred and fifty seven & $\frac{84}{100}$ dollars.

And I further certify and report that Schedule A, hereto annexed, contains a statement and account of the principal and interest money due to the complainant as aforesaid, the period of the interest, its rate per cent., & the mode of computation. All of which is respectfully submitted.

Dated Detroit, August 20th, 1870.

JOHN J. SPEED,
Master in Chancery & Examiner in above Cause.

Master's fees, $10.00.

Schedule "A" Referred to in Above Cause.

Bond & mortgage, dated November 17th, 1866, principal	$35,000 00
Interest at 7 per cent from November 17th, 1867, to date	6,757 84
Total amount due August 20th, 1870	$41.757 84

August 20th, 1870.

JOHN J. SPEED,
Master in Chancery & Examiner.

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

GARRET B. HUNT & JACOB ESCHLEMAN, Compl'ts,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, HENRY S. CUNNINGHAM, George J. Robinson, Calvin Haines, Philip M. Ranney, Def'ts.

It having been referred to me as examiner to take proofs in this cause, I do fix five days as reasonable time for giving notice of the time and place of examination of witnesses herein under the 67th rule in equity; and it is ordered that said five days' notice be given to the opposite counsel, solicitors, or parties of the time & place of examination by either party desiring to examine witness herein.

Detroit, July 12th, 1870.

JOHN J. SPEED,
Master in Chancery & Examiner.

Master or Commissioner's Summons.

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

GARRET B. HUNT, JACOB ESCHELMAN, Complainants,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, HENRY S. CUNNINGHAM, George J. Robinson, Calvin Haines, & Philip M. Ranney, Defendants.

By virtue of an order in the above cause, made by the said court referring it to John S. Speed, one of the masters in chancery
2595 of this court, residing in the city of Detroit, and appointing him examiner herein to take proofs herein, and to compute the amount due on the bond & mortgage in this cause, do hereby summon you to appear at my office, No. 124 Jefferson avenue, Detroit, on the twentieth (20th) day of August instant, at ten o'clock in the forenoon, to attend a hearing of the matters in the said cause, in reference before me as such master & examiner, pursuant to said order; and hereof fail not at your peril.

Dated the twelfth day of August, in the year of our Lord one thousand eight hundred and seventy.

JOHN J. SPEED,
Master in Chancery & Examiner.

To G. H. Penniman & Wm. John, Jr., Solicitors for Defendants:

Underwriting, to attend to the computation of the bond & mortgage set forth in the bill in this cause, & to ascertain & report the amount due thereon.

JOHN J. SPEED,
Master in Chancery & Examiner.

EASTERN DISTRICT OF MICHIGAN, *ss:*

EDWIN F. CONELY, being duly sworn, says that on the 13th day

of August, A. D. 1870, he served the within notice upon the within-named solicitors for the defendants by delivering a copy to each of them personally.

EDWIN F. CONELY.

Subscribed and sworn to before me this 15th day of August, A. D. 1870.

JAMES W. CARR.
Notary Public, Wayne County, Michigan.

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

GARRET B. HUNT & JACOB ESCHELMAN, Complainants,
vs.
DAVID D. OLIVEK, SARAH ANN OLIVER, HENRY S. CUNNINGHAM, George J. Robinson, Calvin Haines, & Philip M. Ranney, Defendants.

Take notice that on the 20th day of August, 1870, at ten o'clock in the forenoon, the said complainants will apply to John J. Speed, Esq., master in chancery & examiner in this cause, & ask him to compute the amount due on the bond & mortgage set forth in the bill in this cause, & to ascertain & report the same to this court, such application will be made to said master, at his office, No. 124 Jefferson avenue, Detroit, and, at the same time, the complainants will offer in evidence in this cause said bond and mortgage and the assignment thereof to complainants, and ask that they may be made exhibits & part of the proofs in this cause.

Detroit, August 12th, 1870.

D. B. & H. M. DUFFIELD,
Complainant's Solicitors.

To G. H. Penniman & Wm. Johns, def'ts' solicitors.

2596–2607 EASTERN DISTRICT OF MICHIGAN, *ss:*

EDWIN F. CONELY, being duly sworn, says that on the 13th day of August, A. D. 1870, he served a copy of the within notice on each of the within-named solicitors for the defendants in the above-entitled cause.

EDWIN F. CONELY.

Sworn to and subscribed before me this 13th day of August, A. D. 1870.

JAMES W. CARR,
Notary Public, Wayne County, Michigan.

Endorsed: No. 1381. U. S. circuit court, eastern district of Michigan. In chancery. Garret B. Hunt *et al.*, compl't, *vs.* David D. Oliver. Def't's compl'ts, proofs, & master's report of am't due on bond & mortgage. Master's fees, $1.00. Paid by compl't's sol'r. Filed in clerk's office Aug. 22nd, 1870. A. Mandell, clerk.

[Motion for leave to prove Exhibit C *viva voce*, note of filing master's

report & service, motion to set aside order extending time, order on motion to set aside, motion to rescind order of July 12, &c., order of continuance, submission of motion to rescind, &c., order to set aside, &c., order to withdraw master's report from files, & submission of motion to prove Exhibit C *viva voce* omitted per stipulation of counsel.]

2608 And afterwards, to wit, and now on this day, that is to say at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Friday, the twenty-fourth day of March, in the year one thousand eight hundred and seventy-one.

Present: The Honorable John W. Longyear, district judge.

GARRET B. HUNT and JACOB ESCHLEMAN, Complainants,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, HENRY S. CUNNINGHAM, CALVIN HAINES, PHILIP M. RANNEY, and GEORGE J. ROBINSON, Defendants. } In Chancery.

The motion by complainants in this case for leave to examine witnesses *viva voce* at the hearing to prove the execution of a certain deed of assignment executed by Henry S. Cunningham, one of the defendants, to the said complainants, and dated the second day of September, A. D. 1868, having been heretofore argued and submitted, and the court, having considered the same, it is now ordered that the said motion be, and the same is hereby, granted; and that said complainants have leave to examine Benjamin H. Williams and Oscar F. Barton, or either of the them, as a witness *viva voce* at the hearing of this cause to prove the execution of said deed of assignment.

2608½–2612 [Notes of issue, Oct. 20, 1871, Feb. 23, 1872, & May 24, 1872, & hearing & continuance, omitted per stipulation of counsel.]

2613 And afterwards, to wit, and now, on this day: that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Saturday, the ninth day of November, in the year one thousand eight hundred and seventy-two.

Present: the honorable John W. Longyear, district judge.

GARRET B. HUNT and JACOB ESCHLEMAN, Complainants,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, GEORGE J. ROBINSON, CALVIN HAINES, PHILIP M. RANNEY, and HENRY S. CUNNINGHAM, Defendants. } In Equity.

This cause again coming on to be heard, is submitted, without further argument, to the court for decision.

2613*a* *Appeal from the Circuit Court of the United States for the Eastern District of Michigan.*

Supreme Court of the United States. In Equity.

GARRET B. HUNT and JACOB ESCHLEMAN, Impleaded with Henry Cunningham, Calvin Haines, Philip M. Ranney, Henry M. Robinson, and George J. Robinson, Appellants,

vs.

DAVID D. OLIVER, Appellee.

It is hereby stipulated between the parties hereto, that the following is a newspaper copy of the opinion delivered by Judge Longyear, at the time he rendered decree in the foreclosure suit of Garret B. Hunt and others against David D. Oliver and others; that we agree that it is substantially a correct copy, and consent that it may be included in the return now in the Supreme Court in the appeal in which this stipulation is entered as a part of the record, although the original opinion was not filed by the judge in said cause; that the same shall be printed in volume 2, as divided by the clerk of the Supreme Court, and shall be paged to immediately precede the decree in said foreclosure suit, which will be found on
2613*b* page 2614, as repaged and indexed by the clerk of the Supreme Court.

ALFRED RUSSELL,
Sol'r for Complainant.
HENRY M. DUFFIELD,
Sol'r for Def'ts Hunt & Eschleman.

Opinion of Judge Longyear.

The original bill is the ordinary bill for foreclosure of a mortgage on real estate. The mortgage sought to be foreclosed bears date November 17th, 1866, and was made and executed by David D. Oliver and his wife to secure the payment of $35,000 and interest to Garrett B. Hunt, Jacob Eschelman, and Henry S. Cunningham for balance of purchase-money of the mortgage property. The bill alleges an assignment by Cunningham of his interest in the mortgage to his co-mortgagees, Hunt and Eschelman, and the suit is brought by them alone. The mortgage is accompanied by the bond of David D. Oliver. The whole amount of principal and interest, less one year's interest acknowledged to be paid, is claimed to be due and remaining unpaid. Cunningham, one of the original mortgagees, is made a party defendant to the foreclosure suit on the ground that he has or claims rights, etc., in and to the mortgaged premises.

The defendant, David D. Oliver, alone defends. His defense is set up by way of an answer and a cross-bill. The defense set up is, substantially, that the mortgagees, together with the other defendants named in the foreclosure bill, for a long time before said bill was filed, had been, and still are, in possession of the mortgaged premises and in receipt of the rents, issues, and profits of the same

under an arrangement and agreement that the mortgage
2613c debt should be received by and paid to them out of such rents, issues, and profits. It is claimed, however, that at all events, and whether such agreement is made out or not, any rents, issues, and profits which may have been so received by the mortgagees should be applied on the mortgage debt.

The objects of the cross-bill are to obtain a decree that certain transactions between Oliver and Cunningham, and certain conveyances by Oliver to Cunningham, and by the latter to their co-defendants, Robinson, Haines, and Ranney, had and made in relation to the mortgaged property, were so had and made with Cunningham in his capacity of mortgagee, notwithstanding his alleged assignment to his co-mortgagees and with the privity and consent of his said co-mortgagees, the complainants in the foreclosure suit; and that the said transactions, conveyances, and transfers were so made to enable the said Cunningham, Robinson, Haines, and Ranney to pay off and discharge the mortgage debt in question, and hence, if not already paid and satisfied, it must be left to be paid; or, at all events, that the rents, issues, and profits already accrued to the parties named must be applied, so far as they will go, to the payment of the mortgage debt.

2. And the object of the cross-bill is to obtain a decree that Oliver's co-defendants, Cunningham, Robinson, Haines, and Ranney, pay any balance there may be found due and payable on the bond and mortgage.

3. And still another object of the cross-bill is to obtain a satisfaction and discharge of the mortgage.

2613d The only question for decision, as raised by the pleadings, are those indicated by the above statement of the objects of the cross-bill. I shall therefore proceed to consider those questions in the order above stated. Before doing so, however, it is proper that the positions of and the decree asked for by Oliver's counsel on the argument should be noticed. These are, substantially, first, that the conveyance by Oliver to Cunningham and by the latter to Robinson, Haines, and Ranney of Oliver's equity of redemption in the mortgaged premises are null and void, for the reason that the same were the result of a conspiracy to defraud Oliver, and should therefore be set aside; and, second, that, those conveyances being set aside, then the complainants must be held to be mortgagees in possession, and as such accountable for the rents, issues, and profits to be applied to the payment of the mortgage debt.

As to the first proposition, it has already been held by this court, in deciding the demurrer to the cross-bill as originally filed, that the nature, character, and purposes of those conveyances cannot be adjudicated in this suit any further than they relate to and affect the mortgage debt in the original suit, for the reason that those conveyances cover a large amount of other property than the mortgaged property, and concern other interests than the mortgaged debt and other parties than the parties to the original foreclosure suit. For the same reasons the court will decline to

make any decision as to the validity or invalidity of
2613*e* those conveyances, but will leave Oliver to his plenary suit, which he states he has commenced against the parties concerned, or which he may see fit hereafter to bring. In fact, after that decision, by which the demurrer to the cross-bill was sustained, the cross-bill was amended in accordance with the theory of the decision, and, as it now stands, the court is asked by it to enforce the objects and purposes of those conveyances, so far as the mortgage debt in the foreclosure suit is concerned, and not to set the same aside. Therefore, the position of counsel upon the argument is inconsistent, not only with the theory of the decision of the court already made, but with the theory of the amended cross-bill, and cannot be entertained. The theory of the amended cross-bill was, however, also insisted on upon the argument. I shall, therefore, now proceed to consider the questions arising upon that theory, as before stated.

The lands for the purchase-money of which, and on which, the mortgage sought to be foreclosed was given were located in Alpena county, in this State and district, and were valuable mainly for the pine timber upon them. In the summer and fall of 1868 Oliver was possessed in fee of a large quantity of other pine lands, and also held a contract for the purchase of still other lands of the same character, all in the same and adjoining counties, and adjacent to or in the neighborhood of the said mortgaged lands. Oliver also had two saw-mills on a portion of the lands at a place called Ossineke, and had been and then was carrying on the business of the manufacture of lumber from the lands above-mentioned,
2613*f* formerly by himself, and also with one Hawkins, but latterly, and at that time, in company with George J. Robinson, one of his co-defendants in the foreclosure suit. The company had on hand also at that time a considerable amount of personal property connected with the business, such as teams, vehicles, manufactured lumber, logs, etc. In September of that year, 1868, Oliver had become very much embarrassed in his pecuniary affairs, and was owing debts to divers persons, over and above the mortgage debt in this case, amounting to about sixty thousand dollars, much of which was then past due, and a large proportion of which was secured by mortgage on said lands, and none of which he was then able to pay. The mortgagees of the mortgage sought to be foreclosed in this suit were not pressing Oliver for payment or further security, although a considerable portion of their debt was then past due. But Oliver was apprehensive that some of his other creditors, whose debts were past due, were about to press him for payment, and that his property might be thereby sacrificed, and in such manner as to leave him nothing out of the wreck.

In this condition of Oliver's affairs, Cunningham, one of the mortgagees of the mortgage in question, at Oliver's special solicitation and request, went to Ossineke on the 3d or 4th of September, 1868, and there, at Oliver's like solicitation and request, received from Oliver deeds of conveyance and transfer of Oliver's entire interest and title in and to all the before-mentioned lands, saw-mills and
2613*g* personal property, but without paying any consideration therefor. Cunningham, however, before receiving such convey-

ances and transfers, by advice of counsel, executed an assignment of his interest in the mortgage to his co-mortgagees, Hunt and Eschelman, the complainants to this foreclosure suit.

Immediately after receiving the conveyances Cunningham returned to Buffalo, in the State of New York, where he resided, and he and Oliver at once commenced making efforts to sell the property. Finally, about the first of October, Oliver went to Buffalo at the suggestion of Cunningham, and he and Cunningham there negotiated a sale of a large portion of the before-mentioned lands (including the lands covered by the mortgage in question, and other lands), and all the personal property which had been consigned to Cunningham, as before stated, to the defendants, Robinson, Haines, and Ranney, and an agreement in writing, embodying the terms of the sale, was drawn up, and the same was signed by Cunningham and the said Robinson, Haines, and Ranney. By the terms of this agreement (which for brevity will be hereafter called "the Buffalo agreement") all the lands which had been consigned by Oliver to Cunningham, not so sold to Robinson, Haines, and Ranney (constituting several thousand acres) were to be conveyed to such persons as Oliver should direct; that is, those lands were to remain Oliver's. Haines and Ranney were the partners in business under the name and style of "C. Haines & Co.," and they executed the agreement on their part by that name.

2613*h* This Buffalo agreement contains these provisions: This sale and conveyance by said Cunningham to said party of the second part is to be without warranty, representations of recourse to the said party of the first part, and is to be subject to the following claims:

1. A mortgage given by D. D. Oliver and wife to H. S. Cunningham, Garrett B. Hunt, and Jacob Eschelman upon a certain part of said real real estate, on which mortgage there is unpaid thirty-five thousand dollars and interest, which said mortgage is now owned and held by said Hunt and Eschelman. (N. B.—This is the mortgage in foreclosure in this suit.)

2. A claim and mortgage formerly held and owned by C. Haines & Co., of Lockport, including a mortgage executed by said Oliver and wife to C. Haines, which mortgage is now held by Dr. J. H. Helmer, of Lockport, New York, and which claim and mortgage is about nineteen thousand dollars.

3. A claim of J. B. Wayne, of Detroit, Michigan, of about twelve thousand dollars, secured by a mortgage on a portion of said real estate.

4. A claim of James H. Hill of about three thousand dollars.

5. The copartnership indebtedness of the firm of Oliver and Robinson.

Immediately after this are the following provisions:

"Said party of the second part, in consideration of the aforesaid agreement of said Cunningham, agree to take said property
2613*i* subject to the above claims and hereby agree to assume and to pay at the time of the conveyance of said Cunningham one-half part of a certain mortgage held by E. and G. R. Haines,

which mortgage was executed by said Oliver and covers some of the lands hereby contracted and other lands belonging to D. D. Oliver, and on which mortgage there is unpaid about ten thousand and five hundred dollars.

"Said party of the second part further covenant and agree to and with said Cunningham that they will, at the time of the conveyance by said Cunningham, release or discharge, or procure to be released and discharged, all mortgages given by George W. Hawkins to C. Haines or E. and G. R. Haines, and covering lands in the counties of Erie and Niagara, in the State of New York, or either of said counties, and will protect and save harmless the said Hawkins therefrom, and from the debts thereby secured. Said party of the second part, however, in lieu of assuming and paying the one-half part of said mortgage held by E. and R. Haines, and of discharging said Hawkins' mortgage, and saving him harmless from the debts thereby secured, have the option to assign, or procure to be assigned, to Garrett B. Hunt, of Clarence, New York, the mortgage of C. Haines and Co. against the real estate of George W. Hawkins, and the debts secured thereby, and in addition to pay or secure the payment to said G. B. Hunt of the sum of four thousand dollars within one year from November 3rd, 1868; and in case the said party of the second part shall assign, or cause to be assigned, to said Hunt said mortgage of C. Haines & Co., and the debt secured thereby, and shall pay, or secure to be paid. within one year
2613*j* from November 3rd, 1868, to said Hunt the sum of four thousand dollars, then and in that case said party of the second part shall not be held to assume the one-half part of said mortgage of E. and G. R. Haines, nor to procure to be discharged the said mortgage of said Hawkins, or to save the said Hawkins harmless therefrom, or from the debt thereby secured. Said party of the first part further agrees that he will assign a certain agreement made between D. D. Oliver and David Preston for the purchase of about 6,500 acres of land in Alpena and Alcona counties, Michigan; said assignment to be also without recourse, and subject to the aforesaid claims, and also subject to the contract price for said last-mentioned lands. And said parties of the second part hereby agree that upon such assignment being made they will pay to said David Preston or assigns the said contract price, and will convey to such persons as said Oliver shall direct, free of charge, all of the said last-mentioned 6,500 acres which lie outside of townships 28 and 29 north, range 8 east."

The agreement then further provides, in substance, that if Cunningham should, within thirty days from its date (October 3, 1868), pay to C. Haines & Co. sixteen thousand dollars, and to Robinson twenty-five thousand dollars, Cunningham should be released from conveying, etc., to them, as agreed. The agreement then contains certain other provisions as to what C. Haines & Co. and Robinson are to do in consideration of such payments being made to them respectively, and of certain other considerations, but which
2613*k* provisions are unimportant to be stated in this connection. The proof shows that the object of this provision was to afford

Oliver an opportunity to make a more advantageous disposition of the property if he could, and that the time was afterwards extended to the 15th of November following for the same purpose.

Oliver having failed to make any other disposition of the property within the time allowed him for that purpose, Cunningham conveyed to Robinson, Haines, and Ranney, as specified in the agreement. Immediately, or very soon thereafter, the grantees formed a copartnership for the manufacture of lumber upon the property so conveyed, and entered into the possession and occupancy of the same, and commenced operations. In January following Cunningham became a member of the concern, and the property has been so occupied and operated ever since.

The foregoing statement comprises facts in the case which are either undisputed or are so well proved as to be deemed by the court indisputable.

The above facts also comprise, I believe, the entire transactions upon which Oliver bases his defense to the mortgage in question. So far as appears on the face of the transactions themselves, and it is clear that, without any further or other showing; that defense is not maintained, because it nowhere appears on the face of the transactions that Hunt and Eschelman, the complainants in the foreclosure suit, were in any manner privy to those transactions or were in any manner whatever connected with them.

But it is contended on behalf of Oliver that other facts
2613*l* proven in the case establish the following propositions:

First. That Cunningham, notwithstanding his assignment of his interest in the mortgage to his co-mortgagees, in all his doings in the premises acted in fact as mortgagee and creditor of Oliver, and with reference to his interest in said mortgage, and that Oliver dealt with him, so far as he was concerned in that capacity; that Cunningham was also acting on behalf and for the benefit of his co-mortgagees as well as his own, and with their consent and authority. From this it is argued that the actings and doings of Cunningham in the premises must be taken and deemed to be the actings and doings of Hunt and Eschelman as well, and hence that Cunningham's share of the rents, issues, and profits of the mortgaged premises should be applied to the payment of the mortgaged debt.

Second. That Hunt and Eschelman, availing themselves of the transactions aforesaid, and because of their mortgaged lien, became and still are, in their own proper persons, interested in the mortgaged premises, and in the rents, issues, and profits of the same as partners of the said Robinson, Haines, Ranney, and Cunningham, and that therefore their share of the rents, etc., should apply on the mortgage debt.

In considering these propositions it is important to determine and bear in mind the exact bearings of the case in relation to the particular contract or agreement by which, in any event, the rights and liabilities of the parties respectively must be determined, so far as this case is concerned.

2613*m* Oliver alleges in both his answer and cross-bill, and he so testifies, that his conveyances and transfers to Cunningham

at Ossineke in September, 1868, were in trust merely, and that the trust, as agreed upon between them at the time, briefly stated, was for Cunningham to take Oliver's place in his co-partnership with Robinson, and to make advances and continue to conduct the business, and out of the proceeds of certain of the personal property, and of the rents, issues, and profits of the business, to pay off all indebtedness, including the mortgage in question (which, however, was to be deferred until the last), and then to reconvey the property to Oliver and certain other persons named, and in a certain manner specified. It is also contended that Robinson, Haines, and Ranney are, by proofs, properly chargeable with notice of such trust at the time the Buffalo agreement was entered into, and that they received the conveyances and transfers under the same, and that, therefore, all the actings and doings of the parties under and by virtue of the said last-mentioned agreement and conveyance must be held subject to the terms of that trust.

There is no declaration of trust in the conveyances themselves, and it is not pretended that the trust was reduced to writing, but, on the contrary, it is expressly stated in the answer and cross-bill that that it was verbal merely. Up to the time of the Buffalo agreement, at least, Cunningham had not entered upon and laid down nothing whatever toward the execution of any such trust, and in his testimony he expressly denies its existence. While there is
2613*n* some evidence deduced from previous transactions, and from statements made by Cunningham about the time he received those conveyances, tending in some degree to corroborate Oliver, the result of all the testimony is unsatisfactory and fails to produce the conviction on the mind of the court that such trust ever had an existence, even by parol.

But such a trust, resting in parol, is absolutely void by the statutes of Michigan (2 comp. laws of 1857, sec. 3200, p. 948), and will in no case be enforced where it has not been executed, and then only when it is clearly and satisfactorily make out by the proofs. Cunningham concedes that he paid no consideration, and testifies that the objects and purposes of the transaction, as understood between him and Oliver, were to keep Oliver's creditors off for a time, and in the meantime to aid Oliver to make a sale of the property, so as, if possible, to save something for himself. The subsequent conduct of both Oliver and Cunningham, up to and including the Buffalo agreement, seems to corroborate Cunningham. But in the view the court takes in the matter, it is not important to determine what the objects and purposes of those transactions were, because, whatever they were, I think that for the purposes of this case they must have been held to have been superseded by and merged in the Buffalo agreement. That agreement is the first and only step in the transactions in question at which the objects and purposes of the transactions were reduced to writing; and, it may be added, the only step in regard to which there is any certainty as to what
2613*o* those objects and purposes were. True, Oliver in his answer and in his cross-bill avers, in general terms, that said contract "was not drawn in accordance with the terms assented to by

him." But this cannot avail him anything, for the following reasons: He does not state wherein the contract varies from "the terms assented to by him;" he does not seek to have it reformed; he has acted upon it and received the benefit of provisions contained in it in his favor, by receiving conveyances of some of the lands which by its terms were to be conveyed to him; and, lastly, and the strongest reason, he asks to have it enforced. For the purposes of this suit, therefore, the rights and liabilities of the parties must be determined by the terms of the Buffalo contract.

As to the term of the contract, so far as they relate to the mortgage in question, Oliver in his cross bill alleges that although such agreement was not such as was stipulated, and it was not agreed to by your orator, it did seem that said Robinson, Haines, and Ranney were to cancel and deliver up to your orator or to said Cunningham for your orator's benefit the mortgage and other obligations made to them by George W. Hawkins, that they would pay James B. Wayne, of Detroit, about the sum of eleven thousand dollars for your orator; that they would also pay one James H. Hill, of East Saginaw about the sum of three thousand dollars, and especially that they would provide for said Hunt and Eschelman's mortgage,
2613*p* and would free your orator from all obligations connected with the same, etc. And it is upon this theory of the contract that he asks to have the rents, issues, and profits of the morgaged property applied upon the mortgage debt, supposing, of course, that he has succeeded in connecting Hunt and Eschelman with the contract.

It will be seen, however, upon a reference to the clauses of the contract hereinbefore quoted that two classes of claims are mentioned; first, those subject to which the sale and conveyance was made, and second, those which were assumed and agreed to be paid by the grantees, and that the mortgage in question belongs to the first class, viz: claims subject to which the sale and conveyance was made. It is therefore upon this latter theory that the defense must be allowed, if at all. Supposing, then, for the sake of the argument, that the proof connect Hunt and Eschelman with the transactions in question, including the Buffalo agreement, the case, so far as the mortgaged premises in question are concerned, is this, viz: that of a mortgage or leasing and conveying to third parties, but for the benefit in part of his mortgagees, the equity of redemption, subject to the mortgage. This means nothing more than that the mortgage should be kept alive, notwithstanding the lease and conveyance, a former transaction perfectly legal and legitimate, and one often adopted to keep the mortgage alive as a protection against subsequent liens or some intermediate estate, and for other purposes. (1 Washburn on Real Property, 612.)

But can the defense be maintained upon that theory in order
2613*q* to admit the defense claimed, and to charge the mortgaged debt with the rents, issues, and profits of the mortgaged premises, it is necessary in view of the Buffalo agreement to set aside that agreement and the conveyances under it of Oliver's equity of redemption; because, while that agreement and conveyance stands,

Oliver has no right to the rents, issues, and profits. This dilemma, no doubt, occurred to Oliver's counsel, and was the foundation of their request upon the argument for a decree to the effect stated, viz: to set aside the conveyance. But as we have already seen and for the reasons given, no such decree can be made in this cross suit.

When this case was before the court on the demurrer to the cross bill, this court decided that the bill, as then framed, was not a proper cross bill, for the reason:

"1. That while no claim is set up that the mortgage sought to be foreclosed has been fully paid and satisfied or otherwise extinguished, the bill contains no offer nor any willingness to pay what there may be found due thereon.

"2. It seeks relief as to matters not growing out of it but entirely foreign to the matters in litigation in the original suit.

"3. It seeks no relief as to the specific matters of the original suit, either as against the complainants in that suit or as between Oliver and his co-defendants therein, except as such relief may be incidental to or grow out of the relief sought as to such foreign matters, and even that is left to inference."

The cross bill was then amended so as to cover those defects. An offer was made to pay any balance, etc., and the entire prayer
2613r for relief was changed. It omitted the prayers for relief as to matters involved in the transactions between the parties not growing out of the matters in litigation in the original suit, but on the contrary, asked that the transactions and agreements between Oliver and Cunningham, and Robinson, Haines and Ranney, so far, and so far even as they relate to the payment and discharge of the mortgage in question might be enforced. The prayer as amended also asked for an account to be taken of the proceeds, rents, issues, and profits of the property conveyed, and that the same might be applied on the mortgage debt; that Cunningham, Robinson, Haines and Ranney might be decreed to pay any more than might be found remaining due and unpaid of the mortgage debt, as between them and Oliver, and that Hunt and Eschelman might be decreed to acknowledge satisfaction, etc.

These amendments were allowed for the reason, and on the sole ground that it was alleged in the cross-bill, as originally filed, that by the Buffalo contract, Robinson, Haines and Ranney agreed especially that they would provide for the mortgage in question and would free Oliver from all obligations connected with the same; and that Hunt and Eschelman, although not nominal parties to the transactions, yet that their relations to the transaction, and their actings and doings in the premises were such that in equity they ought to be bound by the terms of that agreement.

If these facts were as alleged, then it would be inevitable that Oliver should be released from his personal liability for the mort-
2613s gage debt, and that the mortgagees should look to Robinson, Haines and Ranney alone for the payment of any deficiency. But as we have already seen, the foundation fact upon which all the relief prayed for by the amended cross-bill, viz., that by the Buffalo agreement the mortgage was to be provided for and Oliver was to be

freed and discharged from his personal obligation therein, had no existence. But for this allegation the cross-bill would probably have been dismissed on the demurrer, and as it now appears to have been untrue the amended cross-bill cannot be expected to fare any better.

The court has not lost sight of that other element introduced into the case and ingeniously urged in argument that in view of all the circumstances surrounding the parties and attending the transactions, the conveyances and transfers from Oliver to Cunningham and by him to Robinson, Haines and Ranney, must be deemed and held to have been made to enable the grantees to pay the mortgage debt, among other debts, and to procure the discharge of the mortgage in question. But as we have already seen, this cannot be done in this case, because it is contrary to the express terms of the written agreement, which, for the purposes of this case, must be enforced as it reads. An implied agreement on the part of Robinson, Haines and Ranney to pay the mortgage debt cannot be raised in this case for two reasons: First, there is an express agreement to pay certain mortgage debts, and this is not one of them; and second, even if the contract were silent upon the subject, the law would not raise such an implication. (Tillotson *vs.* Boyd, 4 Sandf., ch. R., 516; Murray *vs.* Smith, 1 Duer, 412; Stebbins *vs.* Hall, 29 Barb., 524.)

2613*t* Transactions between mortgagor and mortgagee in relation to the mortgaged property are always viewed with jealousy by courts of equity. And when the mortgagor has conveyed his equity of redemption to the mortgagee and afterwards files his bill to redeem, the court will scrutinize the transaction closely, and if there appears to have been any fraud, unfairness, or oppression on the part of the mortgagee, will set the conveyance aside and admit the mortgagor to redeem; and in such case will charge the mortgage debt with the rents, issues, and profits of the mortgaged property which may have come to the hand of the mortgagee. (Villa *vs.* Rodriguez, 12 Wall., 323, 339; 1 Washburn on Real Property, 521.) But where, as in this case, the matter is presented by way of defense to a foreclosure suit and the conveyance of the equity of redemption at the same time concerns property, parties, and matters entirely foreign to the matters involved in the foreclosure suit, for reasons already made apparent, no such decree can be made. The mortgagor must be left to seek his remedy, if he have any, by a plenary suit.

As will be observed, I have proceeded upon the theory that Hunt and Eschleman, mortgagees and complainants in the foregoing suit, were parties to, or at least bound by, the transactions in question, without deciding the question whether the proof sustain that theory or not. I have done this for two reasons; first, because a decision of the question of fact was unnecessary to a decision of this case; and, second, I desired to refrain from unnecessarily expressing any opinion or making any ruling which might in any man-

2613*u* ner prejudice or embarrass either party in the litigation between them alleged in the cross-bill to be pending, or which may hereafter be instituted. For similar reasons I have refrained from making any decision or expressing any opinion upon several

other points presented by the pleadings and in the arguments of counsel. All those matters, however, have had my full and careful attention, and were omitted from my written opinion only when I found that their solution was unnecessary to a decision of the case.

It results therefore:

1. That the transactions and conveyances in question in the cross-bill for the reasons stated cannot be set aside in this suit.

2. That Oliver's rights and liabilities in the premises must be determined under and by virtue of the terms and conditions of those transactions and conveyances.

3. That the conveyance of Oliver of his equity of redemption in the mortgaged premises in question, having been made expressly subject to the mortgage, the complainants in the foreclosure suit, even if privy to the conveyance, have a right to foreclose their mortgage.

A decree must be entered dismissing the cross-bill with costs to the defendants therein to be taxed, but without prejudice, and in favor of the complainants in the foreclosure suit for the foreclosure of their mortgage, with the costs of that suit to be taxed.

2613*v* The amount of debt and interest for which the decree of foreclosure must be entered is the whole amount of the mortgage debt and interest from one year after the date of the mortgage, as follows:

Mortgage debt, Nov. 17th, 1866	$35,000
Interest from November 17th, 1867, to this date (Dec. 23rd, 1872), 5 years 1 month and 6 days, at 5 per cent. per annum	12,495
Total debt and interest	$47,495

Let a decree be entered accordingly.

2613*w* [Endorsed on cover:] Sup. Court U. S., 1885. Oct'r term. No. 214. G. B. Hunt *et al.*, app'ts, *vs.* David P. Oliver. Stipulation of counsel & addition to record. [Stamp:] Office Supreme Court U. S. Filed Sep. 30, 1885. James H. McKenney, clerk.

2614 [Note of issue, Oct. 19, 1872, omitted, per stipulation of counsel.]

Final Decree.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the twenty-third day of December, in the year one thousand eight hundred and seventy-two.

Present: Honorable John W. Longyear, district judge.

In the Case of GARRET B. HUNT & JACOB ESCHLEMAN, Complainants,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, GEORGE J. Robinson, Calvin Haines, Philip M. Ranney, & Henry S. Cunningham, Def'ts,
} In Equity. Original Bill.

and

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, HENRY S. Cunningham, Philip M. Ranney, Calvin Haines, & George J. Robinson, Defendants.
} Cross-Bill.

2615 This cause came on to be heard at this term and was argued by counsel, the cross-bill and the original bill being heard together upon the pleadings and proofs therein, and thereupon — consideration thereof it was ordered, adjudged, and decreed as follows, viz: That the cross-bill filed in this cause be, and the same is hereby, dismissed without prejudice, and with costs to the defendants in the said cross-bill to be taxed, and, the respective counsel consenting thereto, that the same be added to the amount hereinafter found to be due upon the bond and mortgage in the original suit; that there is due to the complainants in said original bill at the date hereof on the bond and mortgage mentioned and set forth in said original bill of complainant the sum of forty-seven thousand four hundred and ninety-five dollars, $47,495.00, for the principal and interest.

And it is further ordered, adjudged, and decreed that the said defendants pay, or cause to be paid, to the said complainants, or to D. B. & H. M. Duffield, their solicitors, the said amount of forty-seven thousand four hundred and ninety-five dollars, $47,495.00, the amount hereinabove adjudged due as aforesaid, together with the interests and costs, on or before the twenty-fourth day of June, in the year one thousand eight hundred and seventy-three, and in default thereof that all and singular the said mortgaged premises mentioned in the bill of complaint in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainant for the principal, interest, and costs in this case, and which may be sold separately, without material injury to the parties interested, be sold at public auction, by or under the direction of a master of this court, at any time after the said twenty-fourth day of June, in the year one thousand eight hundred and seventy-three; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the said master give public notice of the time and place of such sale according to the course and practice of this court, and that the complainants, or any of the parties in this cause, may become the purchasers; that the said master execute a deed to the purchaser, or purchasers of the mortgaged premises on the said sale; and that the said master out of the proceeds of said sale pay to the com-

plainants, or their solicitors, their costs in this suit to be taxed, together with the costs in the cross-bill to be taxed, and also the amount so reported to be due, as aforesaid, together with legal interest thereon from the date of this decree, or so much thereof as the purchase-money of the mortgaged premises will pay of the same; and that the said master take receipt for the amount so paid, and file the same with his report; and that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the further order of this court; and it is further ordered, adjudged, and decreed that the defendants and all persons claiming, or to claim, from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof; and it is further ordered that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, and that any of the parties of this cause who may be in posession of
2616 said premises, or any part thereof, and — person who since the commencement of this suit has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the master's deed for such premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute; and it is further ordered and decreed that if the moneys arising from said sale shall be insufficient to pay the amount so reported due to the complainants, with interests and costs and expenses of sale as aforesaid, that said master specify the amount of such deficiency in his report of said sale, and that on the coming in and confirming of said report the defendant, David D. Oliver, who is personally liable for the debt secured by said mortgage, be decreed to pay to the complainants the amount of such deficiency, with interest thereon from the date of such report, and that the complainants have execution therefor.

The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, viz:

All those tracts or lots of land lying in the county of Alpena, in the State of Michigan, and particularly described according to the Government's survey thereof as follows, viz: In township twenty-nine (29) north, range (8) east, three thousand acres, namely: In section twenty-one (21), the northwest quarter, the northwest quarter of the southwest quarter, the east half of the southwest quarter, and the east half of the section; in section twenty-two (22), the north half of the section, the northwest quarter of the southwest quarter and the east half of the southeast quarter; in section twenty-three (23), the west half of northwest quarter, and the southwest quarter; in section twenty-five (25), the west half of the northwest quarter; in section twenty-six (26), the east half of the northeast quarter, the southwest quarter of the northwest quarter, the southwest quarter, the west half of the southeast quarter and the southeast quarter of the southeast quarter; in section twenty-seven (27), the west half of the north-

east quarter, the southeast quarter of the northeast quarter, and the southeast quarter; in section thirty-four (34), the east half of the section; in section thirty-five (35), the northwest quarter, the south half of the southwest quarter, and the east half of the section; in section thirty-six (36), the south half of the southwest quarter, the lands and premises above described, being the same lands and premises conveyed by the Saint Mary's Ship Canal Company to said Garret B. Hunt and others, by deed dated October 1st, 1873, and recorded in the register's office of Alpena county, in liber B of deeds, on pages twenty-nine, thirty, and thirty-one; also all those tracts or lots of land lying in the county of Alpena and State aforesaid, and more particularly described according to the Government survey thereof, as follows, namely: In section twenty-seven (27), the west half of the section; in section twenty-eight (28), the east half of the northwest quarter, the south half of the southwest quarter, and the east half of the section; in section thirty-two (32), the east half of the northeast quarter; in section thirty-three (33), the north half
2617 of the northeast quarter, and the northwest quarter, all in township twenty-nine (29) north of range eight (8) east, containing eleven hundred and twenty acres, the land and premises above described being the same lands and premises conveyed by the Saint Mary's Falls Ship Canal Company to the said Garret B. Hunt and others by deed dated October 1st, 1863, and recorded in the register office of Alpena county, in Liber B of deeds, on pages twenty-seven and twenty-eight, the above tracts or parcels of lands containing in all four thousand one hundred and twenty acres, more or less, according to the returns of the surveyors general.

Also, the undivided two-thirds of all those certain tracts or lots of lands lying in said county of Alpena, being part of seven hundred and fifty thousand acres of land, patented on the 25th day of May, 1855, by the State of Michigan to the Saint Mary's Falls Ship Canal Company, and more particularly described according to the Government survey thereof, as follows, viz: In township twenty-nine (29) north, range eight (8) east, thirteen hundred and sixty acres, to wit: in section eight (8), the northeast quarter and the east half of the northwest quarter and the south half of the section; in section nine (9), the west half of the northwest quarter and the west half of the southwest quarter; also all of section seventeen (17); also all those other tracts or lots of land, being part of said seven hundred and fifty thousand acres of land, situate in said county of Alpena, and more particularly described according to the Government survey thereof, as follows, viz: The southeast quarter of the southeast quarter of section seven (7); the E. $\frac{1}{2}$, N. W. $\frac{1}{4}$, and E. $\frac{1}{2}$ of the southwest quarter, and the southwest quarter of the southwest quarter, and the west half of the southeast quarter of section eight (8); the northwest quarter of the northeast quarter of section seventeen (17); also, in the same section, the northwest quarter and northwest quarter of the southwest quarter; in section eighteen (18) the northeast quarter of the northeast quarter, all in township twenty-nine (29) north of range seven (7) east, and containing six hundred acres; also all those other tracts or parcels of land in township twenty-

nine (29) north of range eight (8) east, and described as follows: The south fractional half of section twelve (12), containing two hundred twenty-seven $\frac{5}{100}$ acres, more or less, with the saw-mill and other improvements thereon; the south half of section eleven (11), three hundred and twenty acres; the north half of the northeast quarter, the west half of the northwest quarter, and the west half of southwest quarter of section fourteen (14), and the northeast quarter, the south half of northwest quarter, and the south half of section fifteen (15), containing eight hundred acres; also the northwest fractional quarter, the northeast quarter of the southwest fractional quarter, and east half of section nineteen (19), and the entire section twenty (20), containing one thousand one hundred and fifty four $\frac{90}{100}$ acres, more or less, according to the Government survey in Michigan; also all those lots or tracts of land in township twenty-eight (28) north of range eight (8) east, described as follows: Southwest quarter of northeast quarter, northwest fractional quarter, and southwest quarter of section four (4); the southwest quarter of northwest quarter and south half of section five (5); the east half of section
2618 six (6), the east half of northeast quarter and northwest quarter of northeast quarter of section seven (7); the north half of northwest quarter and east half of section eight (8); the north half of section nine (9), and the southwest quarter and the northwest quarter of southeast quarter of section nine (9); the entire section ten (10); the north half of southeast quarter; the southeast quarter of southeast quarter; the north half of southwest quarter, and southwest quarter of southwest quarter of section eleven (11), containing in all two thousand nine hundred and ninety-three $\frac{84}{100}$ acres, more or less, according to the returns of the surveyor general. Also the following lands: Lots one, two, and three of section two (2); and southeast quarter of northeast quarter of section seven (7); and the east half of southwest quarter, and northwest quarter of southwest quarter, and northwest quarter of southeast quarter of section five (5); all in township twenty-nine (29), north of range eight (8) east, containing two hundred acres, more or less; also, all the following lands, described as follows: southwest quarter of southwest quarter of section twelve, in township twenty-eight (28) north of range eight (8) east, forty acres; also the following described lands: west fractional half of northwest fractional quarter, eighty $\frac{47}{100}$ acres of section five (5); east fractional half of northeast fractional quarter, and southwest quarter of northeast quarter, and southeast quarter of northwest quarter, and west half of southeast quarter of section six (6), and west half ot northeast quarter of section seven (7), all in township twenty-nine (29) north of range eight (8) east.

JNO. W. LONGYEAR,
District Judge.

Endorsed: No. 1381. Circuit court U. S., eastern district of Michigan. In equity. Garrett B. Hunt *et al.*, compl't *vs.* David D. Oliver *et al.*, def'ts, and David D. Oliver, compl't, *vs.* Garret B. Hunt *et al.*, def't. Final decree passed, signed, entered, and filed December 23rd, 1872, in open court. A. Mandell, clerk.

2619–2630 [Stipulation as to taxed costs, continuance of motion for stay, precipe for copy of decree, order denying motion for stay, master's report of sale, note of filing master's report of sale, & precipe for order confirming master's report of sales, omitted per stipulation of counsel.]

2631 *Order Confirming Master's Report of Sale.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Friday, the eighth day of May, A. D. 1874.

Present: Hon. Jno. W. Longyear, district judge.

GARRET B. HUNT & JACOB ESCHLEMAN, Compl'ts,
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, GEORGE J. Robinson, Calvin Haines, Philip M. Ranney, Henry S. Cunningham, Def'ts.
} In Equity. File No. 1382.

It appearing to the court that the master charged with the execution of the decree heretofore entered in this cause did, on the 5th of September, 1873, make & file his report of the sale of the
2632 mortgaged premises mentioned in said decree, setting forth that on the 28th of August, A. D. 1873, under and by virtue of said decree, he sold the said mortgaged premises to Garret B. Hunt for fifty thousand six hundred and ninety-nine dollars and forty-four cents, and more than thirty days having elapsed since the filing of said report, and no exceptions having been filed thereto:

On motion of D. B. & H. M. Duffield, solicitors for complainants, it is ordered by the court, now here, that the said master's report of sale be, and the same is now by the court here in all things confirmed.

D. B. & H. M. DUFFIELD,
Sol'r for Compl'ts.

Endorsed: No. 1381. In c't c't U. S. for E. dist. of Michigan. In chancery. Garret B. Hunt & Jacob Eschelman, compl'ts., *vs.* David D. Oliver, Sarah Ann Oliver, & others, def'ts. Order of confirmation of master's report of sale. Filed in open court, May 8, 1874. A. Mandell, clerk.

2633 *Cross-Bill.*

To the judges of the circuit court of the United States for the eastern district of Michigan, in chancery:

David D. Oliver, of the town of Ossineke, county of Alpena and State of Michigan, and a citizen of the State of Michigan, brings this his cross-bill against Garret B. Hunt and Jacob Eschleman, of the town of Clarence and State of New York; Henry S. Cunningham, of the city of Buffalo and State of New York; Philip M. Ranney, and Calvin Haines, of the city of Lockport and State of New York, and who are citizens of the State of New York; and George J. Robinson,

of the town of Alpena and State of Michigan, and who is a citizen of the State of Michigan.

And thereupon your orator complains and says: That on the 17th day of November, A. D. 1866, being indebted to the said Hunt, Eschleman, and Cunningham for the purchase-money of a portion of the lands hereinafter mentioned and specifically set forth in schedule "A," hereunto annexed, your orator joined with his wife, Sarah Ann Oliver, in executing and delivering to the said Hunt, Cunningham, and Eschleman a mortgage upon the lands specifically set forth in the said Schedule "A," conditioned upon the payment of the sum of thirty-five thousand dollars.

And your orator further shows that at this time he was seized in fee of the lands described in said mortgage and of a large quantity of other lands in the counties of Alpena and Alcona, and at the same time had the possession and equitable title to a large quantity of other lands in said counties, specifically set forth and described in Schedule "B," hereto annexed and made part of this bill, the legal title to which stood in the name of David Preston, of Detroit, who held the same as security for the payment of about ten thousand dollars and interest thereon, which said sum the said Preston had expended in payment of the purchase-price of said lands at the request of your orator, and had taken the title thereto in his own name, as a security for the payment to him of the said sum and interest; that the stream known as Devil river flows through a portion of these lands; that upon the said lands adjoining the said river your orator had erected a mill-dam across said river near where the same flows into Thunder Bay, and a valuable saw-mill, propelled by water, which said mill was capable of sawing and manufacturing about one million six hundred thousand feet of lumber per year during the ordinary manufacturing season; that in connection with said water mill there were railways, valuable and accessible docks for the running and piling of lumber and for the shipping of the same.

That upon another and adjoining portion of said lands there was, during the year 1867, erected by your orator a steam saw-mill near to where the said river enters Thunder Bay; that as part of the said steam saw mill there was the frame and building erected by
2634 your orator at a cost of five thousand dollars, and the boilers, engines, saws, and machinery placed therein by your orator at a cost of sixteen thousand dollars; that there were also a railway, dock, platform, slides, and other improvements and fixtures erected by your orator at a cost of eight thousand dollars and used in connection with said mill; that there were also upon said lands five dwelling-houses, two barns, one blacksmith shop, one carpenter shop, one store, and one store barn, beside the aforesaid saw-mills; that all the lands above referred to were pine timber, located on and near to the said Devil river and its tributaries, and the pine saw logs cut therefrom could easily and cheaply be put into said Devil river and floated to the said mill for manufacture into lumber, and that in connection therewith the said mill-dam was valuable as a reservoir in which to keep said logs, to raise the water in said river, and make the right of floatage more valuable.

That the said water mill, together with the right to use water from said mill-dam, was reasonably worth six thousand dollars, that said steam saw-mill was reasonably worth the sum of thirty thousand dollars, and the said lands on which the said mills were situated and the improvements were worth the sum of thirteen thousand dollars, and that the said pine lands were worth about one hundred and sixty thousand dollars.

And your orator further shows that some time in the fall of the year 1866 a verbal copartnership was entered into between your orator and one George W. Hawkins, of Niagara county, New York; that your orator agreed to sell the said Hawkins an undivided half interest in the said mill property and lands in vicinity thereof, but that no articles of copartnership were ever drawn, no conveyance of the said interest was ever actually made, and that some time in the spring of the following year the said Hawkins retired from further participation in the business of the said firm, though without a formal dissolution of said copartnership, and he has never since assumed to have any interest in your orator's business.

Your orator further shows that during the existence of said copartnership and on the 20th day of November, A. D. 1866, the said firm of Oliver & Hawkins contracted to deliver to the said Calvin Haines about one and one-half million feet of lumber on his dock in Buffalo; that said firm received an advanced payment of five thousand dollars upon said contract, and that to secure the repayment of said advance, as well as the due and faithful performance of said contract, your orator executed and delivered to the said Calvin Haines his individual mortgage upon that portion of the said Devil river mill property included in sections eleven and twelve, town. 29 north, range eight east, and comprising the mill property, dock, and adjoining lands.

That during the following winter a copartnership was formed between the said Calvin Haines and Philip M. Ranney under the name of C. Haines & Co., to which firm the said contract between Oliver & Hawkins and Calvin Haines was transferred; and that subsequently and on the 28th day of November a new contract for the delivery of five hundred thousand feet of lumber to the said C. Haines & Co. was made by your orator, and a small advance received thereon.

And your orator further shows that on the 14th day of January, A. D. 1867, the said firm of Oliver & Hawkins entered into another contract with the firm of E. & G. R. Haines, of Buffalo, New York, whereby they agreed to deliver the said E. & G. R. Haines two million feet of lumber; that said firm received an advance of
2635 five thousand dollars upon said contract, and that to secure the repayment of said advance, as well as the due and faithful performance of said contract, your orator executed and delivered to the said E. & G. R. Haines his individual mortgage upon said mill property and a large quantity of other lands in that neighborhood.

Your orator further shows that during the said winter of 1866–'7 the said firm of Oliver & Hawkins cut and hauled into Devil river

about 3½ million feet of logs; that early in the spring of 1867 the said water mill was started, and lumber shipped on said contract, and your orator also commenced the erection of the aforesaid steam mill; that in June, of the same year, your orator went to New York, saw the said firm of C. Haines & Co., and E. & G. R. Haines, settled with them for the lumber, cancelled the last contract with C. Haines & Co., procured a modification of the former contracts with both of said firms, whereby the price and quantity of lumber to be delivered was somewhat reduced, and procured from each of said companies a further advance of four thousand dollars, to secure which, as well as the due performance of the said contracts, your orator gave his individual chattel mortgage upon the aforesaid logs gotten out during the previous winter by the said firm of Oliver and Hawkins.

Your orator further shows that shortly before the 15th day of October, A. D. 1876, he commenced to negotiate with one Henry M. Robinson, of the city of Detroit, in relation to a copartnership between your orator and George J. Robinson, the son of the said Henry M. Robinson; that at this time, besides the real estate, mill property, and its appurtenances above mentioned, your orator had in his mill-dam, at Devil river, and immediately on the bank of said river, two million feet of pine saw logs, which were reasonably worth seven dollars per thousand feet; that your orator then kept a store at Devil river, and had goods therein of the value of five thousand dollars; that he also had a large amount of other personal property consisting of horses, harnesses, sleighs, wagons, trucks, chains, oxen, yokes, and other similar property, of the value of seven thousand five hundred dollars, the use of all of which said personal property was put into the partnership hereinafter mentioned.

Your orator further shows that after considerable negotiation a copartnership was finally agreed upon between himself and the said George J. Robinson, and in pursuance of this arrangement, and for the purpose of giving the said Robinson an interest in his said business, your orator, on the 15th day of November, A. D. 1867, conveyed to the said George J. Robinson an undivided one-quarter of the real property above mentioned and specifically set forth in Schedule C, hereunto annexed, owned by him in fee, and also contracted to sell him an undivided quarter of the lands of which he held the equitable title from the said Preston, and upon the receipt of the amount of the mortgage, hereinafter mentioned, agreed to give him a clear title to the said undivided quarter; that the consideration your orator was to receive for the sale of the said undivided one-quarter of said real property was thirty-five thousand dollars, fifteen thousand dollars of which the said Robinson agreed to pay at once in cash, as follows: Three thousand dollars in cash to your orator, three thousand dollars to James B. Wayne, of Detroit, who held a chattel mortgage, executed by your orator, on the machinery, engine, and boilers, four thousand dollars to said David
2636 Preston, to apply on the said indebtedness from your orator on account of the purchase-money of said lands, and five thousand dollars in cash to be paid by the said Robinson into the said firm

as your orator's share of the working cash capital thereof; that to secure the payment of the remainder of the said sum of thirty-five thousand dollars, to wit, the sum of twenty thousand dollars, with interest thereon at seven per cent., the said George J. Robinson executed and delivered to your orator his bond and mortgage upon the aforesaid lands; that according to the condition of the said bond both the principal and interest were to be paid out of the said Robinson's share of the earnings of said copartnership, but that according to the condition of said mortgage the principal only of said sum was payable from said earnings, the interest being payable annually, irrespective of the sources from which it might be derived. He further says that no part of the said principal or interest has ever been paid.

Your orator further shows that the said fifteen thousand dollars was actually paid by the said Robinson, as follows: Three thousand dollars in cash to your orator; that the said Robinson did not pay or cause to be paid to the said Preston anything on account of your orator's indebtedness to him, but that he did pay the sum of five thousand dollars for your orator into said firm in lieu of paying the same to said Preston, leaving this defendant actually furnishing nine thousand instead of five thousand dollars toward the working cash capital of said firm; that, as your orator is informed and believes, the said Robinson paid the said Wayne the said sum of three thousand dollars, but that instead of having the same applied to reducing the amount of said mortgage from your orator to Wayne the said Robinson purchased an interest in said mortgage to that amount and took an assignment of so much thereof to himself or to his said father in his own interest and for his own benefit, which interest he still holds.

Your orator further shows that upon the 16th day of November, A. D. 1867, in pursuance of the verbal arrangement above mentioned, under which the said conveyances was made to Robinson and the said bond and mortgage taken from him, written articles of copartnership were entered into between your orator and the said George J. Robinson, in which, after reciting the sale of the aforesaid one-quarter interest to the said Robinson and the receipt of fifteen thousand dollars, it was agreed that a partnership in the business of getting out logs and manufacturing and selling lumber should be entered into between your orator and the said George J. Robinson under the name of Oliver and Robinson, to which each partner should contribute a working capital of five thousand dollars besides besides his interest in the lands and mills; that said partnership should date from the said 15th day of October and should be dissolved at the pleasure of either party upon six months' notice, providing, however, that the said Robinson might retire at the end of a year without notice; that your orator should receive profits and bear losses in the proportion of three-fourths and the said Robinson in the proportion of one-fourth of the whole; that each partner was to draw a salary of fifteen hundred dollars per annum; that your orator was to protect the firm from the claims of his individual creditors, and especially against the said mortgage to Hunt, Eschle-

man, and Cunningham, and the claim of said Preston to the
2637 aforesaid lands, and that if the said Robinson chose to retire at the end of a year and to surrender his interest in said property, he should be repaid the said fifteen thousand dollars and other advances he might make, and should have a lien on the partnership property therefor.

Your orator further shows that said articles were drawn by counsel employed by said Robinson; that your orator, who is unlearned in the law, was not represented by counsel; that portions of said articles were never read to your orator before signing, and he did not fully understand the purport of said articles, which further provided that your orator should also contribute to said copartnership the personal property above mentioned belonging to your orator, including his stock of goods, horses and wagons, trucks, chains, logs, lumber, and timber of every kind as the same existed on the premises on the said 15th day of October, and that said articles should operate as a bill of sale from your orator to the partnership of the said property; but your orator expressly charges that according to the understanding between himself and said Henry M. Robinson, with whom the negotiations were almost wholly carried on, and who acted throughout as the principal party in the transaction, the use only of said property was to be contributed.

Your orator further shows that it was agreed between himself and said Robinson that, as he was acquainted with the business, and understood what was necessary for the coming winter, he should purchase most of the goods and supplies; should be charged with all the money belonging to the firm, and be credited with all purchases made with cash; that all running accounts with various firms and persons made prior to the 15th day of October, A. D. 1867, should be assumed by said copartnership, and the balances up to that day should be carried to your orator's account; that copartnership books were soon after opened, and the transfers of balances made as above agreed upon and indicated by said articles, but that the said Robinson afterwards repudiated the said accounts, and refused to pay any debt contracted or made prior to the 15th day of November, and still refuses to pay the accounts so assumed.

Your orator further shows that during the months of November and December, A. D. 1867, and January, February, March, and April, A. D. 1868, the said firm of Oliver & Robinson cut from said lands, and put into the said Devil river, about seven million feet of pine saw-logs, and that the same were afterwards run down the river to the mills for manufacture into lumber; that the expense of putting the same into said river amounted, without including the stumpage, to about four dollars per thousand feet; that afterwards a large part of the said logs were cut up and sawed into lumber at the said mills at a cost for labor and other necessary expenses of about three dollars per thousand feet besides the use of said mills; that from such logs there was manufactured about six million feet of lumber; that such lumber, when so manufactured, was of an average value of twelve dollars per thousand feet at said mills, and that the expense of cutting, hauling, handling, and sawing said

lumber, and other expenses, excepting the value of the standing timber and the value of the use of said mill, did not exceed seven dollars per thousand feet, leaving a clear profit thereon of about five dollars per thousand feet, and that there should have been
2638 derived therefrom at least thirty thousand dollars. Your orator further shows that there remained at the opening of navigation the present season, unsawed, in said stream, of the said logs, and of the logs got out by your orator, about two million feet; and that there remained of the lumber so manufactured on the docks, at and near said mills, about one million feet, of the value of twelve thousand dollars. Your orator further shows that after the formation of such copartnership, and after the transfer to said firm of the goods in the store, the mercantile business was carried on by said firm, and the profits of such business, up to the said 13th day of September, A. D. 1858, exceeded five thousand dollars.

Your orator further shows that on the 22nd day of April, A. D. 1868, the said George J. Robinson, without the direction or assent of your orator, executed and delivered to the said E. & G. R. Haines, and to the said C. Haines & Co., a chattel mortgage upon two and one-half million feet of logs belonging to the said Oliver and Robinson, to secure the payment of six thousand dollars which was afterwards charged to this defendant; that said Robinson assumed to give this mortgage in settlement of the amount due upon the previous chattel mortgage given by your orator to the said Haines, under which a large amount of lumber had been delivered and against which your orator claimed equities to a large amount; that said mortgage was signed by the said George J. Robinson in the name of the firm of Oliver & Robinson, without the consent of said Oliver; that said Robinson thereby assumed to release the lien of the previous chattel mortgages given upon your orator's logs which had passed into the possession of Oliver & Robinson without in any way releasing the personal indebtedness of your orator, and that said mortgage over the signature of said firm contains many false recitals concerning your orator and to his great injury.

Your orator further shows that said Robinson pretended and so stated in the chattel mortgage given as aforesaid by him that the knowledge of the existence of the chattel mortgage first above mentioned was fraudulently concealed from him at the time said copartnership was formed; but your orator alleges that such pretences are not true and that at all times since the formation of said copartnership the surplus assets and moneys of your orator have far exceeded any amount due upon said mortgage, and that said mortgage was duly filed in the office of the township clerk of Ossineke, in Alpena county, at the time said copartnership was formed and long before and after that date.

Your orator further shows that about the first day of April, A. D. 1868, the said George J. Robinson left Alpena for Detroit for the purpose of attending to the chartering of vessels, procuring sales of lumber, paying debts of the firm, purchasing supplies, and doing such other business as might be necessary; that within a short time thereafter your orator shipped him about two million feet of lumber,

which the said Robinson disposed of; that about the first day of May, A. D. 1868, while your orator was at Alpena manufacturing and shipping lumber for the said firm, the said Henry M. Robinson came up to Alpena from Detroit with money belonging to said firm of Oliver and Robinson and assumed the entire control and management of the business, excluding the said Oliver from all par-
2639 ticipation therein, notifying the operators that the money he had brought was his own; that he had put into the firm from forty to seventy thousand dollars; that all the property of the company belonged to him and that if they expected to be paid they must obey the orders given by himself, by George Robinson, or by one G. B. Melville, who assumed to have a power of attorney to do business for the firm, but who in fact held none to the knowledge of your orator; that the said Robinson forbade the operatives to obey your orator, compelled them to stop running the water mill, and prevented their starting the shingle mill in consequence of which a large quantity of timber belonging to said firm then floating in Devil river, and intended to be used in making shingles, passed by the company's boom into the lake.

Your orator further shows that he has not drawn from the said firm more than two or three hundred dollars, and that said Robinson, in connection with his said father, Henry M. Robinson, and the other parties hereinafter mentioned, still has possession of all the property of said firm and have continued to exclude your orator from all participation in its business and profits.

Your orator further shows that about the same time the said George J. Robinson commenced to sell the lumber and other personal property of said firm and continued to make sales thereof from time to time, and that he took and has kept in connection with the parties hereinafter mentioned the entire proceeds of said sales; that with the money of this complainant or with the moneys of said firm he has purchased an interest in the said chattel mortgage to the said James B. Wayne; that the said Henry M. Robinson assumed in part the management of the affairs of said firm with the said George, and that during the year 1868, up to and before the 13th day of September, they had sold about four million feet of lumber, and after the said 13th day of September, A. D. 1868, and during the same year, about one million feet, all being manufactured from the logs heretofore mentioned, at an average price of about twelve dollars per thousand feet, and the said Robinsons, with the parties hereinafter mentioned, have received the entire proceeds of such sales.

Your orator further shows that from the time the said Robinson took possession of the property of said firm and assumed the management of the business to the exclusion of your orator they have endeavored in various ways to embarrass said business and to prevent your orator from ever regaining any participation therein, and by sundry purchases and conveyances to cut off your orator's title to the property invested in said business; and that in particular on the 25th day of August, A. D. 1868, the said George J. Robinson did, without the knowledge or assent of your orator, execute and deliver, in the name of the firm, to one Andrew Bates, a chattel mortgage

upon the engine, boilers, and machinery of the said steam mill, conditioned for the payment of five thousand dollars in six months from the date thereof, which said mortgage, as your orator is informed and believes, was given without consideration and for the purpose of embarrassing your orator's claim to said property; and that also upon the following day, to wit, the 26th day of August, the said George J. Robinson did, without the knowledge or assent of your orator, execute and deliver, in the name of the firm, to one Isadore Kauffman, of Detroit, a chattel mortgage upon two boilers, one smoke pipe, one breeching, one fire front, one mud pipe, and
2640 one safety valve standing on the west side of said steam mill, conditioned for the payment of two thousand dollars in nine months from the date thereof, which said mortgage, as your orator is informed and believes, was given without consideration, without the request or knowledge of the said Kauffman, and for the sole purpose of embarrassing your orator's claim to said property.

Your orator further shows that at all times since the foundation of said copartnership the said George J. Robinson has been, and still is, in possession of moneys belonging to the said firm of Oliver & Robinson and of money belonging to your orator; that with such money the said George J. or Henry M. Robinson, or both of them, purchased the boilers and machinery of said mill at a sale thereof for the taxes of the year 1867; that such sale was made to Henry M. Robinson, who now claims to own said boilers and machinery, with the mill in which they were contained, but that the same was bid in and paid for by said George J. Robinson, or by his agent, and that, according to the articles of copartnership, the said firm of Oliver & Robinson was chargeable with the payment of said taxes; that said sale was made by the collector of the town of Ossineke; that at the time of the levy and of such sale all of the said boiler-, engines, and machinery so sold were affixed, and had been previously used and running as part of said steam saw-mill, and your orator insists that such property so situated was not liable to such sale.

Your orator further shows that while in the management of such business the said George J. Robinson has suffered judgments to be rendered against said firm, and on execution issued upon such judgments four boilers purchased for the use of said mill were sold, as your orator is informed and believes, in the interest of said Robinson; that the purchase-money was paid from the funds of said Oliver and Robinson, and that such judgments were obtained at the instance of said George J. Robinson to harass and annoy your orator; he further shows that the said George J. Robinson and Henry M. Robinson, after the dispossession of your orator, conducted said business in an improvident and reckless manner, allowing said mill to remain without insurance, although your orator had remitted them money for that purpose, and stating to your orator and others that if the mill burned it would be a relief to them, as they would then sell the personal property and get their money and then turn your orator over to his creditors; that said Henry M. Robinson told said Hawkins, who came to Ossineke to look after supposed rights of his own, that if he would help them get the property away from your

orator they would sell him a quarter interest in the property and business for $35,000; that they would sell the said Melville another quarter interest for the same price; that they could get the property for the encumbrances if the plan was properly worked, and that they accordingly hired the said Hawkins to go to Lockport and Buffalo and induce the said Haines to foreclose their mortgages.

Your orator further shows that a few days after the said Hawkins left for New York, and about the 1st day of July, A. D. 1868, Ermor Haines came up to Alpena on the part of E. & G. R. Haines, and Philip M. Ranney on the part of C. Haines & Co.; that your orator then and there made to them substantially the same proposition afterwards accepted by Cunningham, and which your orator had been informed they would accept; that after some consultation with
2641 the said Geo. J. Robinson they refused to accept the same, but that they then and there offered to purchase so much of the said property as is situated in townships 28 and 29 north, of range eight east, excepting your orator's homestead, and known as the Devil river property, and as the purchase-price thereof they offered to pay all the debts herein specifically mentioned, and to pay your orator ten thousand dollars; that an agreement to that effect was afterwards at Lockport, New York, actually made and executed by your orator and by the said E. & G. R. Haines and C. Haines & Co. on the 25th day of July, A. D. 1868; that by the terms of this agreement it was optional with your orator to accept the said proposition, or to pay, on or before September 5th, A. D. 1868, to E. & G. R. Haines $10,500, and to C. Haines & Co. $7,000, in full of his indebtedness to them; that the time fixed by said agreement for the completion of the said transaction would expire on the said 5th day of September, A. D. 1868, and that said contract was drawn and witnessed by said George J. Robinson; that two days before the said 5th day of September the said Cunningham came to Ossineke and represented to your orator that the said Haines & Co. and E. & G. R. Haines would not complete said purchase, and considered the contract at an end; that an arrangement was then made with said Cunningham that your orator should convey to him his interest in all of said lands in trust to further secure the payment of your orator's debts, including the mortgage to the said Hunt, Cunningham, and Eschelman, the mortgages to E. & G. R. Haines, and C. Haines & Co., a certain mortgage to James B. Wayne, a mortgage on other property to James H. Hill, of East Saginaw, and some unsecured debts of your orator, amounting to about six thousand dollars, and said Cunningham agreed with your orator that in case he would make such conveyance to him of said lands and other lands, to the amount of 6,000 acres, together with his personal property, and his interest in the personal estate of such copartnership, that he would take such property and would assume the place and interest of your orator in such partnership, and would make necessary advances of money from time to time, as the same was needed in such business, and would convert the personal property, logs, and lumber, into money speedily, and would aid and assist with his own means in getting out logs for the next summer's operations, and would manage the

affairs of such partnership with care, prudence, and economy; would pay off all the said liabilities of your orator, and would, when the same, together with the advances made by said Cunningham, were paid, convey back to your orator all of the undivided half of said lands in towns. 28 and 29 north, range eight east, and all the lands deeded to him outside of said towns., and would convey the undivided fourth of all of said lands in towns. 28 and 29 to said George W. Hawkins, for which said Hawkins had agreed to pay your orator, at a further day, the sum of thirty-five thousand dollars; that Hawkins was to have the management of the business under an irrevocable authority from Cunningham, and to have the proceeds of said quarter interest for his services; that it was expected that the personal property would be rapidly converted into cash, and all the cash so received applied to the payment of your orator's said debts as speedily as possible, but it was agreed and understood between your orator and said Cunningham that the payment of the mortgage of thirty-
2642 five thousand dollars from your orator to said Cunningham, Hunt, and Eschleman should be deferred until after all the other of this defendant's said debts were paid, and that such agreement was well known to the said Hunt and Eschleman, and was assented to by them; that at the time of such agreement your orator had no notice or knowledge of any transfer of the interest of said Cunningham in said last-named mortgage, and he avers that such transfer had not in fact been made at that time.

Your orator further shows that, in pursuance of such agreement and understanding between your orator and said Cunningham, your orator, on the said third day of September, A. D. 1868, conveyed all of said lands, together with other real property, to said Cunningham by his deeds of that date, copies of which are hereto annexed, marked "D," "E," "F," and "G;" that he also assigned and delivered to him the contract held from David Preston for the said lands in the name of said Preston, a deed of which was afterwards procured by said Cunningham; that he also assigned to him the said bond and mortgage of twenty thousand dollars held by your orator, and made and delivered to him by the said George J. Robinson. Your orator also at the same time made and delivered to said Cunningham a bill of sale of all the undivided three-fourths of all the said lots, lumber, timber, goods in the store then on hand, and all his interest in and to the said partnership property of Oliver & Robinson, and in and to all claims of every name and nature of your orator in and to said partnership effects.

That there was no consideration whatever paid or received for any of said conveyances, assignments, or transfers other than the existence of the debts assumed and the agreement of said Cunningham, and that the same were all in trust for the purposes hereinbefore mentioned, and for no other purpose whatever.

That the terms of said trust were not reduced to writing, but rest in parol agreement only; that immediately after accepting said trust said Cunningham commenced making money for himself out of the estate to your orator's injury; that he endeavored by false representations to procure the assent of your orator to a sale of said prop-

erty at less what it was reasonably worth; that soon afterwards the said Cunningham left Ossineke, went to Buffalo, in the State of New York, and telegraphed your orator to go there and see him; that your orator met him in Buffalo about the tenth day of October, A. D. 1868, and said Cunningham pretended he would be unable to execute the said trust; said he would have nothing to do with it, and advised your orator to allow him to sell his interest in said property to the said George J. Robinson, Calvin Haines, and Philip M. Ranney, who, he said, would purchase the same from himself, and requested your orator to agree that he might make a sale of said property to said proposed purchasers; that your orator did finally assent to a sale by Cunningham to the said Robinson, Haines, and Ranney of all the property in towns. 28 and 29 north of range eight east; that all the parties went together to the office of B. H. Williams, in the city of Buffalo, about the tenth day of October, A. D. 1868, and there this defendant gave his verbal assent to a contract between the said Cunningham on the one part for the sale, and the said Robinson, Haines & Ranney on the other for the purchase, of said property; but your orator did not remain until said contract was reduced to writing, nor did he see the same for some time afterwards; that on your orator's return to Buffalo he requested a copy of this agreement, but was refused the same, though he was permitted
2643 to read the original in the said Williams' office; that your orator found, upon the examination of said contract, that the same was not drawn in accordance with the terms assented to by him, but that upon his complaining to said Cunningham and asking him why it was so drawn, he became quite indignant and said it was the best he could do; that although said agreement was not such as was stipulated and was not agreed to by your orator, it did state that said Robinson, Haines & Ranney were to cancel and deliver up to your orator, or to said Cunningham for your orator's benefit, the mortgages and other obligations made to them by your orator and George W. Hawkins; that they would pay James B. Wayne, of Detroit, about the sum of eleven thousand dollars for your orator; that they [would] also pay one James H. Hill, of East Saginaw, about the sum of three thousand dollars, and especially that they would provide for said Hunt and Eschleman's mortgage and would free your orator from all obligation connected with the same; would also release your orator from all liabilities of the said firm of Oliver & Robinson, and would also pay E. & G. R. Haines one-half the amount due upon the mortgage to them; and upon the fulfillment of the conditions above stated by the said Robinson, Haines, and Ranney, the said Cunningham was to convey to them an undivided three-fourths interest in all the property, both real and personal, in said towns. 28 and 29, and would reconvey to your orator all the lands conveyed to him by — outside of said towns. 28 and 29, together with the lands which your orator had held under a contract from David Preston and which had been conveyed from Preston directly to said Cunningham; that all the conditions of this agreement were to be fulfilled and accomplished within thirty days from the date thereof; that about the expiration of the said thirty

days the said Cunningham conveyed the said property in towns. 28 and 29 to said Robinson, Haines, and Ranney without the payment of a dollar to your orator or for his benefit, or performing any of the conditions of said agreement; that the said Cunningham hereby disregarded entirely your orator's claims; that under and by virtue of such sale a copartnership by and between George J. Robinson, Calvin Haines, and Philip M. Ranney, under the name of Robinson, Haines & Co., [was formed]; that some time in the month of January of the succeeding and present year a new copartnership was formed between the same parties and Henry S. Cunningham, under the name of Cunningham, Robinson, Haines & Co., and that some time during the last spring, as your orator —, the said Henry M. Robinson, Garret B. Hunt, and Jacob Eschleman were taken into said firm, which is now carrying on the business and holding possession of your orator's property under the name of the Ossineke Lumber Company.

Your orator further shows and charges the fact to be that there was a conspiracy and an agreement between George J. Robinson, Henry M. Robinson, Calvin Haines, Philip M. Ranney, Henry S. Cunningham, Garret B. Hunt, and Jacob Eschleman, to swindle and defraud your orator; that in pursuance of this design and for that purpose—

(1.) The said Cunningham obtained the aforesaid conveyances and assignments from your orator and fraudulently conveyed the said property in towns. 28 and 29 without consideration or regard to your orator's rights; that he did not put said Hawkins in charge of said business and made no effort to pay off any of the said incumbrances or claims.

2644 (2.) The said Haines and Ranney before making the agreement with said Cunningham to deliver up and cancel your orator's mortgages assigned the said mortgages and obligations of your orator and George W. Hawkins to the said Hunt and Eschleman without consideration.

(3.) The said Henry M. Robinson has purchased the mortgage against your orator from the said James B. Wayne, which was one of the claims stipulated to be taken up and cancelled in the agreement between the said Cunningham and Robinson, Haines, and Ranney, and has commenced a suit in the circuit court for the county of Wayne to recover of your orator the sum of twenty thousand dollars.

(4.) The said Cunningham did assign to the said Hunt and Eschlemen without consideration his interest in the mortgage made to the said Hunt, Eschleman, and Cunningham.

(5.) The said Hunt and Eschleman did accept the assignment of said mortgages and obligations of your orator and said George W. Hawkins from the said Haines and Ranney without consideration, and did also accept an assignment from the said Cunningham of his interest in the mortgage above mentioned, and upon the 8th day of April, A. D. 1869, filed in this court their bill of complaint against your orator, his wife, Sarah Ann Oliver, George J. Robinson, Calvin Haines, Philip M. Ranney, and Henry S. Cunningham, praying for

foreclosure of the said mortgage and a sale of the mortgaged premises.

Your orator further shows that to perfect and carry out said fraud and conspiracy all the mortgages and obligations held against your orator and George W. Hawkins by the several parties in the said firm of Cunningham, Robinson, Haines & Co. have been transferred to Henry M. Robinson, Garret B. Hunt, and Jacob Eschleman, and by them suits at law have been commenced to compel your orator to pay the moneys which ought to be paid from the proceeds of your orator's interest in said property.

That said conspiracy and combination to defraud your orator was entered into about the 25th day of July, A. D. 1868, and that none of all the covenants, promises, and writings obligatory made by the said George J. and Henry M. Robinson, Calvin Haines, Philip M. Ranney, Henry S. Cunningham, Garret B. Hunt, and Jacob Eschleman, or either of them, since the above date, has in the least been regarded or fulfilled on their part, nor were they intended to be fulfilled, nor were they made in good faith on their part, but were only made to deceive your orator and induce him to make transfers, promises, and acknowledgments whereby they might gain possession of all your orator's property, and thereby so impoverish him that he would be unable to defray the expenses of litigating with them.

Your orator further shows that the aforesaid firm doing business under the name of the Ossineke Lumber Company now hold by force and fraud all your orator's interest in said mill property and lands without the payment of any consideration therefor; that the said Henry M. Robinson, Hunt, and Eschleman pretend to have no interest in said firm, but they really have a large interest therein; that the said Hunt and Eschleman knew of and assented to the arrangement made in Buffalo between the said Cunningham, Robinson, Haines, and Ranney, and that said foreclosure is in fraud of such arrangement.

Your orator further says that the said assignment by Cunningham to Hunt and Eschleman of his interest in said mortgage
2645 bears date the 2nd day of September, A. D. 1868, but your orator avers and charges that the same was not made in fact for a long time thereafter, and until about the first day of October; that said assignment purports to have been acknowledged on the said 2nd day of September before a notary public of Erie county, New York, but that such certificate is false, and as evidence of such falsity your orator shows and avers that said Cunningham was in Alpena county on that day, and had been for several days before, and was there for several days after.

He further shows that on the said second day of October, A. D. 1868, said Calvin Haines and Philip M. Ranney assigned to the said Hunt and Eschleman the said mortgage from your orator to them, and that on the 13th day of November, A. D. 1868, the said E. & G. R. Haines also assigned the mortgage they held against your orator to the said Hunt and Eschleman. He further says the said assignments were all procured to be made by the said Cunningham in order to place the said mortgage in hands where he could control

them and annoy and harass your orator instead of paying them off, as it was understood he should do.

Your orator further shows that he is ignorant of the amount due upon the mortgage so assigned to the said Hunt and Eschleman by Cunningham, but believes it to [be] far less than the amount stated in their said bill, and says, upon his information and belief, that a large portion of said mortgage has been paid from the profits of said new copartnership.

But now so it is, may it please your honor, that the said defendants combining and confederating with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein with apt and proper words to charge them in order to deprive and defeat your orator of the benefit of redeeming the said mortgaged premises, do pretend that by the said conveyances to Cunningham your orator did thereby absolutely dispose of and convey the said premises without any proviso or condition of redemption, and that the said defendants have now an indefeasible estate in fee simple to the same, and that your orator has no right, title, or interest in or to said property or the profits thereof.

They further pretend that the said Hunt and Eschleman were not parties to the arrangement made at Buffalo under which the said Cunningham, Robinson, Haines, and Ranney took the said property and agreed to pay off the incumbrances thereon, and that they did not know of or assent to the same. They further pretend that the assignment of Cunningham's interest in and to the mortgage made by your orator to the said Cunningham, Hunt, and Eschleman, was actually made at the time the same bears date, and that the said Hunt and Eschleman took the same without knowledge of the understanding between your orator and Cunningham, and that they are entitled to a foreclosure of the same and to a sale of said mortgaged premises and have filed their said bill for that purpose. Whereas your orator charges the contrary thereof to be true.

All which actings and pretences are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator. In consideration whereof and forasmuch as your orator has no remedy without the assistance of a court of equity—

2646 To the end, therefore, that the said defendants and their confederates when discovered may, but not upon oath, which is hereby expressly waived, full and direct answer — to all and singular the matters hereinbefore stated; that the said conveyances and transfers made by your orator to the said Cunningham may be declared a mortgage; that an account may be taken of the amount due upon the said mortgage to Cunningham, Hunt, and Eschelman, and the said mortgage to Calvin Haines and Philip M. Ranney, and an account generally of the amount due upon the said conveyances and transfers herein prayed to be declared mortgages; that an account may also be taken of all the property that passed into the possession of the said Cunningham by virtue of the aforesaid trans-

fers and conveyances, and also of the rents and profits thereof since the said transfers and conveyances were made, and that your orator may be at liberty to redeem the said mortgaged premises upon payment of what, if anything, shall be found to be due upon the said mortgage to Cunningham, which your orator hereby offers to pay, and that the said Cunningham, and all those claiming through or under him, may be decreed to surrender and deliver up the possession of the said mortgaged premises to your orator free and clear of all incumbrances made by them, or either of them, or by any person claiming by, from, or under them, and the said Cunningham may be ordered to acknowledge satisfaction of the said mortgage and discharge the same of record; and that a receiver of the said property may be appointed, with the usual power and authority, by the order of this honorable court, and that the said Cunningham, and all those claiming by, through, or under him, may be directed to assign, transfer, and deliver to the said receiver, upon oath, under the direction of a — of this court, all the aforesaid property, and that the said Cunningham, and all those claiming through or under him, may be enjoined from all interference therewith, or disposal thereof, until the further order of this court; and that your orator may have such further and other relief in the premises, as the nature of the case may require, and to your honor may seem meet—

May it please your honor to grant unto your orator a writ of injunction, to be issued out of and under the seal of this honorable court, directed to the said Henry S. Cunningham, Philip M. Ranney, Calvin Haines, Jacob Eschleman, and Garret B. Hunt, and their attorneys, agents, and servants, enjoining all interference or disposal of the said property until the further order of this honorable court.

May it also please your honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Garret B. Hunt, Jacob Eschleman, Philip M. Ranney, Calvin Haines, George J. Robinson, and Henry S. Cunningham, commanding them at a certain day and under a certain penalty to appear before this court, then and there to answer all and singular the premises, and to abide by and perform such order and decree therein as shall seem agreeable to equity and good conscience.

DAVID D. OLIVER.

NEWBERRY, POND & BROWN,
Compl't's Solr's.
ASHLEY POND, *Of Counsel.*

2647–2648 EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 26th day of August, A. D. 1889, before me, a commissioner of the circuit court of said district, personally appeared the above-named David D. Oliver, and made oath that he had read the foregoing bill, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be

on his information and belief, and as to those matters he believes it to be true.

WM. D. WILKINS,
U. S. Commissioner, Eastern Dist. of Michigan.

[Schedules A & B to cross-bill omitted, per stipulation of counsel.]

2649 SCHEDULE "C."

Statement of Lands Conveyed to George J. Robinson.

Fractions of sections.	Sec.	Town.	Range.
An undivided one-quarter of—			
S w ¼ of n e ¼ n e frac. ¼ of n w ¼	4	28 N.	8 E.
S ½ of n w ¼ & n w ¼	4	28	8
S w ¼ of n w ¼ & s ½	5	28	8
N w frac. ¼ of n e ¼ s ½ of n e ¼ & s e ¼	6	28	8
N ½ of n e ¼ s e ¼ of n e ¼	7	28	8
N ½ of n e ¼ & e ½	8	28	8
N ½ s w ¼ & n w ¼ of s e ¼	9	28	8
Entire section	10	28	8
N ½ of s e ¼ n e ¼ of s e ¼ n ½ of s w ¼	11	28	8
S w ¼ of s w ¼	11	28	8
S w ¼ of n w ¼	12	28	8
N w frac. ¼ n frac. ½ of s w frac. ¼	2	29	8
N w ¼ of s e ¼ s e ¼ of s e ¼	3	29	8
W frac. ½ of n w ¼ n ½ of s w ¼	5	29	8
S e ¼ of s w ¼ n w ¼ of s e ¼	5	29	8
E ½ of n e ¼ s w ¼ of n e ¼	6	29	8
S e ¼ of n w ¼ & w ½ of s e ¼	6	29	8
N e ¼ of s e ¼ s w frac. ¼ of s w frac. ¼	6	29	8
W ½ of n e ¼ s e ¼ of n e ¼	7	29	8
S w frac. ¼ of n w ¼	7	29	8
S w ¼ of n e ¼ n w ¼, e ½ of s e ¼	10	29	8
S w ¼ of s e ¼	10	29	8
E ½ of n w ¼ n e ¼ of s w ¼ s e ¼	11	29	8
E frac. ½ of n e frac. ¼	11	29	8
Entire fractional section	12	29	8
N ½ of n e ¼ w ½ of s w ¼ w ½ of n e ¼	14	29	8
N e ¼ s ½ of n w ¼ s ½	15	29	8
E ½ n w frac. ¼ n e ¼ of s w ¼	19	29	8
Entire section	20	29	8
Entire section	21	29	8
N ½ n w ¼ of s w ¼ e ½ of s e ¼	22	29	8
E ½ of n e ¼ w ½ of n w ¼ s w ¼	23	29	8
E ½ of s e ¼	23	29	8
W ½ of n w ¼ s w ¼ of s w ¼	25	29	8
E ½ of n e ¼ w ½ of n w ¼ & s ½	26	29	8
Entire section	27	29	8
E ½ e ½ of n w ¼ s ½ of s w ¼	28	29	8
E ½ of n e ¼	32	29	8
N ½ of n e ¼ & n w ¼	33	29	8

Fractions of sections.	Sec.	Town.	Range
E ½	34	29	8
N ½ s ½ of s w ¼ & s e ¼	35	29	8
S ½ of s w ¼	36	29	8
An undivided quarter of an undivided two-thirds of the following:			
E ½ e ½ of n w ¼ & s w ¼	8	29	8
W ½ of n w ¼ & w ½ of s w ¼	9	29	8
Entire section	17	29	8

2650–2688 [Warranty & quit-claim deeds attached to cross-bill, subpœna & return, precipes for appearances, exceptions to cross-bill, order of reference of exceptions to cross-bill, report of master on exceptions to cross-bill, consent to substitution of solicitors, precipe for order of substitution, order for substitution of solicitors, order *pro confesso* as to all def'ts, notice of motion to set aside *pro confesso*, affidavits of Duffield, Cunningham, Hunt, & Eschleman, order setting aside *pro confesso*, demurrer to cross-bill, order granting leave to file motion to set aside *pro confesso*, order sustaining demurrer & dismissing cross-bill, affidavit of H. M. Duffield, & notice of order of dismissal, order setting down demurrer for argument, affidavit of G. H. Penniman, order of continuance, order setting aside dismissal, &c., & hearing & submission of demurrer to cross-bill, omitted per stipulation of counsel.]

2689 *Amended Cross-Bill of Complaint.*

STATE OF MICHIGAN:

Circuit Court of the United States for the Eastern District of Michigan.
In Equity.

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, HENRY S. CUNNINGHAM, Philip M. Ranney, Calvin Haines, and George J. Robinson, Defendant.

Geo. H. Penniman, complainant's solicitor.
Alfred Russell, of counsel.

To the judges of the circuit court of the United States for the eastern district of Minchigan, in chancery:

David D. Oliver, of the town of Ossineke, county of Alpena, and State of Michigan, and a citizen of the State of Michigan, brings this, his amended cross-bill, against Garret B. Hunt and Jacob
2690 Eschleman, of the town of Clarence, and State of New York; Henry S. Cunningham, of the city of Buffalo, and State of New York; Philip M. Ranney and Calvin Haines, of the city of Lockport, and State of New York, and who are citizens of the State of New York, and George J. Robinson, of the town of Alpena, and State of Michigan, and who is a citizen of the State of Michigan.

1. And thereupon your orator complains and says, that on the seventeenth day of November, A. D. 1866, being indebted to the said Hunt, Eschleman, and Cunningham for the purchase money of a portion of the lands hereinafter mentioned, and specifically set forth in "Schedule A," hereunto annexed, your orator joined with his wife, Sarah Ann Oliver, in executing and delivering to the said Hunt, Cunningham, and Eschleman a mortgage upon the lands specifically set forth in the said "Schedule A," conditioned upon the payment of the sum of thirty-five thousand dollars.

2. And your orator further shows, that at this time he was seized in fee of the lands described in said mortgage, and of a large quantity of other lands in the counties of Alpena and Alcona, and at the same time had the possession and equitable title to a large quantity of other lands in said counties, specifically set forth and described in "Schedule B," hereto annexed and made part of this bill, the legal title to which stood in the name of David Preston, of Detroit, who held the same as security for the payment of about ten thousand dollars and interest thereon, which said sum the said Preston had expended in payment of the purchase price of said lands at the re-
2691 quest of your orator, and had taken the title thereto in his own name as a security for the payment to him of the said sum and interest; that the stream known as the Devil river flows through a portion of these lands; that upon the said lands, adjoining the said river, your orator had erected a mill-dam across said river near where the same flows into Thunder Bay, and a valuable saw-mill, propelled by water, which said mill was capable of sawing and manufacturing about one million six hundred thousand feet of lumber per year during the ordinary manufacturing season; that, in connection with said water-mill, there were railways, valuable and accessible docks for the running and piling of lumber and for the shipping of the same.

3. That, upon another and adjoining portion of said lands, there was, during the year 1867, erected by your orator a steam saw-mill near where the said river enters Thunder Bay; that, as part of the said steam saw-mill, there was the frame and building erected by your orator at a cost of five thousand dollars and the boilers, engines, saws, and machinery placed therein by your orator at a cost of sixteen thousand dollars; that there were also a railway dock, platform, slides, and other improvements and fixtures erected by your orator at a cost of eight thousand dollars, and used in connection with said mill; that there were also upon said lands five dwelling-houses, two barns, one blacksmith shop, one carpenter shop, one store, and one store barn, besides the said saw-mills; that all the lands above referred to were pine timber lands, located on and near to the said Devil river and its tributaries, and the pine saw-logs cut
2692 therefrom could easily and cheaply be put into said Devil river and floated to the saw-mill for manufacture into lumber, and that, in connection therewith, the said mill-dam was valuable as a reservoir in which to keep said logs, to raise the water in said river, and make the right of floatage more valuable.

4. That the said water-mill, together with the right to use water

from said mill-dam, was reasonably worth six thousand dollars; that said steam saw-mill was reasonably worth the sum of thirty thousand dollars; and the said lands on which the said mills were situated and the improvements were worth the sum of thirteen thousand dollars, and that the said pine lands were worth about one hundred and sixty thousand dollars.

5. Your orator further shows that, after making said mortgage and improving said property, as aforesaid, he conducted the business of the manufacture of lumber in the use and possession of said property individually and with partners, to wit, one George W. Hawkins, and finally with George J. Robinson, son of Henry M. Robinson, who furnished capital to his son; and that in the prosecution of said business your orator became indebted, with his partners, to said defendants Haines and Ranney, and also to E. & G. R. Haines, James B. Wayne, and James H. Hill, in large sums, all secured by mortgages on some of said lands, and in about six thousand dollars to other creditors who received no security; that in the spring of 1868, during your orator's temporary absence from said property and business, his said partner, George J. Robinson, fraudulently, in connection with his said father,
2693 obtained exclusive possession of said property, and thenceforward until now hath continued to keep your orator out of possession, and out of any participation in the issues and profits of said property, and that they ultimately shared the possession and management and profits of said property with said defendants, Hunt, Eschleman and Cunningham, and other defendants, in a fraudulent manner, as hereinafter stated, and your orator was compelled to devise some method for the payment of said Hunt, Eschleman and Cunningham mortgage, and said other maturing mortgages and debts, and for securing the residue of said property, after such payments, for himself.

6. Your orator further shows, that hereafter, and for the purpose last aforesaid, and especially to provide for the payment of said heavy purchase-money mortgage, your orator made an arrangement with said Henry S. Cunningham, who was then, and still is, the owner of a one-third interest in said mortgage, by which your orator should convey to him his interest in all of said lands in trust, to further secure the payment of your orator's debts, including the mortgage to the said Hunt, Cunningham and Eschleman, the mortgages to E. & G. R. Haines, and C. Haines & Co., a certain mortgage to James B. Wayne, a mortgage on other property to James H. Hill, of East Saginaw, and some unsecured debts of your orator, amounting to about six thousand dollars; and said Cunningham agreed with your orator that, in case he would make such conveyance to him of said lands and other lands to the amount of six thousand acres,
2694 together with his personal property and his interest in the personal estate of such copartnership, that he would take such property and would assume the place and interest of your orator in such partnership, and would make necessary advances of money from time to time as the same was needed in such business, and would convert the personal property, logs, and lumber into

money speedily, and would aid and assist, with his own means, in getting out logs for the next summer's operations, and would manage the affairs of such partnership with care, prudence, and economy, would pay off all the said liabilities of your orator, together with the advances made by said Cunningham, and would, when the same were paid, convey back to your orator all of the undivided half of of said lands in towns. 28 and 29 north, range eight east, and all the lands deeded to him outside of said towns., and would convey the undivided fourth of all of said lands in towns. 28 and 29 to said George W. Hawkins, for which said Hawkins had agreed to pay your orator, at a future day, the sum of thirty-five thousand dollars; that Hawkins was to have the management of the business under an irrevocable authority from Cunningham, and to have the proceeds of said quarter interest for his services; that it was expected that the personal property would be rapidly converted into cash, and all the cash so received applied to the payment of your orator's said debts as speedily as possible, but it was agreed and understood between your orator and said Cunningham that the payment of the mortgage of thirty-five thousand dollars from your orator to said Hunt,
Cunningham, and Eschleman should be deferred until after all
2695 the other of this defendant's said debts were paid; and that such
agreement was well known to the said Hunt and Eschleman, and was assented to by them; that at the time of such agreement your orator had no notice or knowledge of any transfer of the interest of said Cunningham in said last-named mortgage, and he avers that such transfer had not, in fact, been made at that time.

7. Your orator further shows that in pursuance of such agreement and understanding between your orator and said Cunningham your orator, on the said 3d day of September, A. D. 1868, conveyed all of said lands, together with other real property, to said Cunningham, by his deeds of that date, copies of which are hereto annexed, marked "D," "E," "F," and "G;" that he also assigned and delivered to him the contract held from David Preston for the said lands in the name of said Preston—a deed of which was afterwards procured by said Cunningham; that he also assigned to him a certain bond and mortgage of twenty thousand dollars held by your orator, and made and delivered to him by the said George J. Robinson, in part payment of his interest in said partnership. Your orator also at the same time made and delivered to said Cunningham a bill of sale of all the undivided three-fourths of all the said logs, lumber, timber, goods in the store then on hand, and all his interest in and to the said partnership property of Oliver and Robinson, and in and to all claims of every name and nature of your orator in and to said partnership effects.

8. That there was no consideration whatever paid or re-
2696 ceived for any of said conveyances, assignments, or transfers
other than the existence of the debts assumed and the agreement of said Cunningham, and that the same were all in trust for the purposes hereinbefore mentioned, and for no other purposes whatever.

9. That the terms of said trust were not reduced to writing, but rest in parol agreement only.

10. That immediately after accepting said trust said Cunningham entered into the possession and use of said property, together with said George J. Robinson, and, instead of operating the same according to the terms upon which he, as aforesaid, received title and possession, to wit, the application of the profits to the payment of said mortgage and other debts, commenced making money for himself out of the estate to your orator's injury; that he endeavored by false representations to procure the assent of your orator to a sale of said property at less than it was reasonably worth; that soon afterwards the said Cunningham left Ossineke, went to Buffalo, in the State of New York, and telegraphed your orator to go there and see him; that your orator met him in Buffalo about the tenth day of October, A. D. 1868, and said Cunningham pretended he would be unable to execute said trust; said he would have nothing to do with it, and advised your orator to allow him to sell his interest in said property to the said George J. Robinson, Calvin Haines, and Philip M. Ranney, who he said would purchase the same from himself, and requested your orator to agree that he might make a sale of said property to said proposed purchasers.

That your orator did finally assent to a sale by Cunning-
2697 ham to the said Robinson, Haines, and Ranney of all the property in towns. 28 and 29 north of range eight east; that all the parties went together to the office of B. H. Williams, in the city of Buffalo, about the tenth day of October, 1868, and there this defendant gave his verbal assent to a contract between the said Cunningham, on the one part, for the sale, and the said Robinson, Haines, and Ranney, on the other part, for the purchase of said property, but your orator did not remain until said contract was reduced to writing, nor did he see the same for some time afterwards; that on your orator's return to Buffalo he requested a copy of this agreement, but was refused the same, though he was permitted to read the original in said Williams' office; that your orator found, upon the examination of said contract, that the same was not drawn in accordance with the terms assented to by him, but that upon his complaining to said Cunningham, and asking him why it was so drawn, he became quite indignant, and said it was the best he could do; that, although such agreement was not such as was stipulated, and was not agreed to by your orator, it did state that said Robinson, Haines, and Ranney were to cancel and deliver up to your orator, or to said Cunningham for your orator's benefit, the mortgage and other obligations made to them by your orator and George W. Hawkins; that they would pay James B. Wayne, of Detroit, about the sum of eleven thousand dollars for your orator; that they would also pay one James H. Hill, of East Saginaw, about the sum of three thousand dollars. and especially that they would provide for said

Hunt & Eschleman's mortgage, and would free your orator
2698 from all obligations connected with the same; would also release your orator from all liabilities of the said firm of Oliver & Robinson, and would also pay E. & G. R. Haines one-half the

amount due on the mortgage to them; and upon the fulfillment of the conditions above stated by the said Robinson, Haines, and Ranney, the said Cunningham was to convey to them an undivided three-fourths interest in all the property, both real and personal, in said towns. 28 and 29, and would reconvey to your orator all the lands convey to him by your orator outside of said towns. 28 and 29, together with the lands which your orator had held under a contract from David Preston, and which had been conveyed from Preston directly to said Cunningham; that all the conditions of this agreement were to be fulfilled and accomplished within thirty days from the date thereof; that about the expiration of the said thirty days the said Cunningham conveyed the said property, in said towns. 28 and 29, to said Robinson, Haines, and Ranney, and let them into the possession and use of said property with himself and said George J. Robinson without the payment of a dollar to your orator or for his benefit, or performing any of the conditions of said agreement; that the said Cunningham thereby disregarded entirely your orator's claims; that under and by virtue of such sale a copartnership by and between George J. Robinson, Calvin Haines, and Philip M. Ranney, under the name of Robinson, Haines & Co., was formed; that some time in the month of January of the succeeding and present year a new copartnership was formed between the same parties and Henry S. Cunningham, under the name of
2699 ningham, Robinson, Haines & Co., and that sometime during the last spring, as your orator is informed and believes, the said Henry M. Robinson, Garret B. Hunt, and Jacob Eschleman were taken into said firm, which is now carrying on the business and holding possession of your orator's property, under the name of the Ossineke Lumber Company. Your orator further shows that the time of the meeting at said William's office, as aforesaid, he made an agreement, in writing, with said Robinson, Haines and Ranney, that he would quit-claim to them any lands in said towns 28 and 29 not covered by his deed to Cunningham, and for like purposes; and also agreed with them and said Cunningham that your orator should quit-claim all his lands in towns 28 and 29 to them for like purposes, because Cunningham's deed would be insufficient to pass title, especially to the Preston lands. That on the 12th day of November, 1868, your orator, accordingly, did execute, acknowledge, and deliver his quit-claim deed, without any consideration, for like purposes; and that on the 13th day of November said Cunningham made, acknowledged, and delivered his deed, without any consideration, to the same persons, for like purposes, but that he dated his deed back to October 3—fraudulently and without your orator's knowledge—for the purpose of enabling him and his grantees to set up the claim that the prior conveyance to him was in trust merely to make a sale, and that your orator's quit-claim was confirmatory of such sale.

11. Your orator further shows, and charges the fact to be, that there was a conspiracy and an agreement between George J.
2700 Robinson, Henry M. Robinson, Calvin Haines, Philip M. Ranney, Henry S. Cunningham, Garret B. Hunt, and Jacob

Eschleman to swindle and defraud your orator; that in pursuance of this design, and for that purpose—

(1.) The said Cunningham obtained the aforesaid conveyances and assignments from your orator, and fraudulently conveyed the said property, in towns 28 and 29, without consideration or regard to your orator's rights; that he did not put said Hawkins in charge of said business, and made no effort to pay off any of the said incumbrances or claims.

(2.) The said Haines and Ranney, before making the agreement with said Cunningham to deliver up and cancel your orator's mortgages, assigned the said mortgages and obligations of your orator and George W. Hawkins to the said Hunt and Eschleman, without consideration.

(3.) The said Henry M. Robinson has purchased the mortgage against your orator from the said James B. Wayne, which was one of the claims stipulated to be taken up and canceled in the agreement between the said Cunningham and Robinson, Haines and Ranney, and has commenced a suit in the circuit court for the county of Wayne, to recover of your orator the sum of twenty thousand dollars.

(4.) The said Cunningham did assign to the said Hunt and Eschleman, without consideration, his interest in the mortgage made to the said Hunt, Eschleman, and Cunningham by a written instrument of assignment, antedated to cut off your orator's equities,
2701 and with a false certificate of acknowledgment, and also dated back his deed to Robinson, Haines and Ranney, as aforesaid.

(5.) The said Hunt and Eschleman did accept the assignments of said mortgages and obligations of your orator, and the said George W. Hawkins from the said Haines and Ranney without consideration; and did also accept an assignment from the said Cunningham of his interest in the mortgage above mentioned, and upon the eighth day of April, A. D. 1869, filed in this court their bill of complaint against your orator, his wife, Sarah Ann Oliver, George J. Robinson, Calvin Haines, Philip M. Ranney, and Henry S. Cunningham, praying for foreclosure of the said mortgage and a sale of the mortgaged premises.

Your orator further shows that to perfect and carry out said fraud and conspiracy, all the mortgages and obligations held against your orator and George W. Hawkins by the several parties in said firm of Cunningham, Robinson, Haines & Co. have been transferred to Henry M. Robinson, Garret B. Hunt, and Jacob Eschleman, and by them suits at law have been commenced to compel your orator to pay the moneys which ought to be paid from the proceeds of your orator's interest in said property.

13. That said conspiracy and combination to defraud your orator was entered into about the twenty-fifth day of July, A. D. 1868, and that none of all the covenants, promises, and writings obligatory made by the said George J. and Henry M. Robinson, Calvin Haines, Philip M. Ranney, Henry S. Cunningham, Garret B. Hunt, and
2702 Jacob Eschleman, or either of them, since the above date has in the least, been regarded or fulfilled on their part; nor were

they intended to be fulfilled, nor were they made in good faith on their part, but were only made to deceive your orator and induce him to make transfers, promises, and acknowledgements whereby they might gain possession of all your orator's property, and thereby so impoverish him that he would be unable to defray the expenses of litigating with them.

14. Your orator further shows that the aforesaid firm doing business under the name of the Ossineke Lumber Company now hold by force and fraud all your orator's interest in said mill property and lands without the payment of any consideration therefor. That the said Henry M. Robinson, Hunt, and Eschleman pretend to have no interest in said firm, but they really have a large interest therein. That the said Hunt and Eschleman knew of and assented to the arrangement made in Buffalo between the said Cunningham, Robinson, Haines and Ranney, and that said foreclosure is in fraud of such arrangement. That said Cunningham, Robinson, Haines and Ranney, and said Ossineke Lumber Company, being well aware of the fraudulent character of their possession and use of said property and business, and justly anticipating your orator's resort to a court of equity to assert his rights, dispossess them and obtain satisfaction of said mortgage, have committed waste upon said lands and have selected the best pine and lumbered in strips, so as to realize the most money in the shortest time, and are now greatly injuring said property so that a receiver ought to be appointed.

2703 15. Your orator further says, that the said assignment by Cunningham to Hunt and Eschleman of his interest in said mortgage bears date the second day of September, A. D. 1868, but your orator avers and charges that the same was not made in fact for a long time thereafter, and until about the first day of October; that said assignment purports to have been acknowledged on the said second day of September, before B. H. Williams, a commissioner of deeds for Buffalo, who was an attorney acting for said Cunningham, Robinson, Haines and Ranney in drafting the contract hereinbefore stated to have been made at his office; but that such certificate is false, and as evidence of such falsity your orator shows and avers that said Cunningham was in Alpena county on that day, and had been for several days before, and was there for several days after.

16 He further shows, that on said said second day of October, A. D. 1868, said Calvin Haines and Philip M. Ranney assigned to the said Hunt and Eschleman the said mortgage from your orator to them; and that on the thirteenth day of November, A. D. 1868, the said E. and G. R. Haines also assigned the mortgage they held against your orator to the said Hunt and Eschleman. He further says, that said assignments were all procured to be made by the said Cunningham in order to place the said mortgages in hands where he could control them and annoy and harass your orator, instead of paying them off as it was understood he should do. That your orator has filed his bill for appropriate general relief in the proper

State court, but is compelled by said fraudulent foreclosure
2704 proceedings in this court to seek herein relief against said proceedings by obtaining payment of said mortgage from the proper funds by the proper parties and its satisfaction and discharge.

17. Your orator further shows that he is ignorant of the *amount due upon* the mortgage so assigned to the said Hunt and Eschleman by Cunningham, but believes it to be far less than the amount stated in their said bill; and says upon his information and belief that a large portion of said mortgage has been paid from the profits of said new copartnerships, and from the rents, issues, and profits of the property so conveyed and transferred to said Cunningham, and now in possession of said Ossineke Lumber Company; and he avers that whatever balance there may be due and unpaid was by said arrangement with said Cunningham, and afterwards with said Robinson, Haines, and Ranney to be paid in the same manner from the rents, issues, and profits of said property.

18. And your orator further shows that your orator is ready and willing and hereby offers to pay whatever sum upon an accounting may be found to be remaining due and unpaid of said mortgage debt; but your orator insists that as between himself and the said Cunningham, Robinson, Haines, and Ranney they ought to be compelled to pay such sum as may be found remaining unpaid of the mortgage debt, and to this end a receiver ought to be appointed to be appointed to take possession of said property, manage the same, and apply the issues thereof to the satisfaction of the sum due upon said mortgage; and that thereupon the mortgagees, said Hunt,
2705 Eschleman, and Cunningham, should be decreed to acknowledge satisfaction of said mortgage now in process of foreclosure, and to discharge said mortgage of record.

19. But now so it is, may it please your honors, that the said defendants—combining and confederating with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein, with apt and proper words to charge them—in order to deprive and defeat your orator of the benefit of redeeming the said mortgaged premises, do pretend that by the said conveyancing to Cunningham your orator did thereby absolutely dispose of and convey the said premises without any proviso or condition of redemption, and that said defendants have now an indefeasible estate in fee simple to the same, and that your orator has no right, title, or interest in or to said property, or the profits thereof. They further pretend that the said Hunt and Eschleman were not parties to the arrangement made at Buffalo, under which the said Cunningham, Robinson, Haines, and Ranney took the said property and agreed to pay off the incumbrances thereon, and that they did not know of or assent to ths same. They further pretend that the assignment of Cunningham's interest in and to the mortgage made by your orator to the said Cunningham, Hunt, and Eschleman was actually made at the time the same bears date, and that the said Hunt and Eschleman took the same without knowledge of the understanding between your orator and Cunningham, and that they are entitled to a foreclosure of the same and to a sale of said

mortgaged premises, and have filed their said bill for that purpose; whereas your orator charges the contrary thereof to be true.

2706 And which actings and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator. In consideration whereof, and forasmuch as your orator has no remedy without the assistance of a court of equity—

20. To the end, therefore, that the said defendants and their confederates, when discovered, may (but not upon oath, which is hereby expressly waived), full and direct answer make to all and singular the matters hereinbefore stated; that the said conveyances and transfers made by your orator to the said Cunningham, and by him to the said Robinson, Haines, and Ranney, may be declared to have been made to enable the grantees to pay the said mortgage debt, among others, and to procure the discharge of the said mortgage security now sought to be foreclosed; that said assignment by said Cunningham of his interest in said mortgage to said Hunt and Eschleman may be declared to have been without consideration, fraudulent, not entitled to registration, null, and void, and that in may be adjudged that said Cunningham hath ever retained his original interest in said mortgage; that an account may be taken of the amount due upon the said mortgage made by your orator to the said Hunt, Eschleman, and Cunningham; that an account may be taken of all the property so conveyed and transferred to said Cunningham, Robinson, Haines, and Ranney for the payment of said mortgage, and now in the possession of said Ossineke Lumber Company, and of the rents, issues, and profits of said property since the date of said conveyances and transfers, received by said mortgages in payment, or which ought to be applied in payment, of

2707 said mortgage debt amongst others; that the said Cunningham, Robinson, Haines, and Ranney may be decreed to pay such sum as may be found to be remaining due and unpaid of said mortgage debt as between them and your orator, and that a receiver of the said property be appointed, with the usual power and authority, by the order of this honorable court, and that the said Cunningham, and all those claiming by, through, or under him, may be directed to assign, transfer, and deliver to the said receiver, upon oath, under the direction of a master of this court, all the aforesaid property, and that the said Cunningham, and all those claiming through and under him, may be enjoined from all interference therewith or disposal thereof until the further order of this court, and that said Hunt, Eschleman, and Cunningham may be decreed to acknowledge satisfaction of the said mortgage, and to discharge the same of record, and that your orator may have such further and other relief in the premises as the nature of the case may require and to your honors may seem meet—

21. May it please your honors to grant unto your orator a writ of injunction, to be issued out of and under the seal of this honorable court, directed to the said Henry S. Cunningham, Philip M. Ranney, Calvin Haines, Jacob Eschleman, and Garret B. Hunt, and their at-

torneys, agents, and servants, enjoining all interference or disposal of the said property until the further order of this honorable court.

22. May it also please your honors to grant unto your orator
2708 a writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Garret B. Hunt, Jacob Eschleman, Philip M. Ranney, Calvin Haines, George J. Robinson, and Henry S. Cunningham, commanding them, at a certain day and under a certain penalty, to appear before this court, then and there to answer all and singular the premises and to abide by and perform such order and decree therein as shall seem agreeable to equity and good conscience.

DAVID D. OLIVER.

GEORGE H. PENNIMAN,
Complainant's Solicitor.
ALFRED RUSSELL,
Of Counsel.

EASTERN DISTRICT OF MICHIGAN, *ss:*

On this twenty-fifth day of January, A. D. 1871, before me, a commissioner of the circuit court of said district, personally appeared the above-named David D. Oliver and made oath that he had read the foregoing amended bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be on his information and belief, and as to these matters he believes it to be true.

ADDISON MANDELL,
U. S. Commissioner, Eastern Dist. of Michigan.

2709-2728 [Schedules A, B, C, D, E, F, & G to amended cross-bill, order sustaining demurrer, &c., affidavits of Major, Oliver, Melville, Reed, Micholowski, Gallup, Hopper, Elsworth (Jno. & Sam'l), Erskine, & Cady omitted per stipulation of counsel.]

2729 U. S. Circuit Court, Eastern District of Michigan. In Equity.

DAVID D. OLIVER
vs.
GARRET B. HUNT, JACOB ESCHELMAN, HENRY S. CUNNINGHAM, PHILIP M. RANNEY, CALVIN HAINES, GEORGE J. ROBINSON.

And now comes said complainant, by his solicitors, and moves the court, upon the amended cross-bill in this cause, and upon the affidavit of Elijah Major, John F. Oliver (2 aff'ts), George B. Melville, Joseph H. Reed, Fredericke Michelowski, Reuben E. Gallup, Abram Hopper, Samuel Elsworth, John Elsworth, Orin Erskine, and Milton Cady, for the appointment of a receiver and the issuing of an injunction, according to the prayer of said amended cross-bill.

GEO. H. PENNIMAN,
Comp. Sol.
ALFRED RUSSELL,
Of Counsel.

Let the above motion be entered on this 28th day of January, 1871.

JNO. W. LONGYEAR,
U. S. Dist. Judge.

The clerk will please enter in the order-book.

RUSSELL,
Of Counsel.

Endorsed: No. 1408. U. S. circuit court. In e'q. David D. Oliver *vs.* Garret B. Hunt & *al.* Motion for inj. & rec'r. Order for entry; precipe for same. Filed in clerk's office Janu. 28th, 1871. A. Mandell, clerk.

2730 At sessions of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Tuesday the seventh day of February, in the year one thousand eight hundred and seventy-one.

Present: Hon. John W. Longyear, district judge.

DAVID D. OLIVER, Complainant.
vs.
—— ——. } In Equity. Cross-bill.

The motion for injunction and receiver heretofore made in this cause coming on to be heard, and having been argued by Mr. Russell in support thereof, and by Messrs. D. B. & H. M. Duffield in opposition thereto, and having been duly considered, it is by the court now here ordered that said motion be allowed to stand until the coming in of the answer of the said defendants, unless otherwise ordered by the court; that defendants have fifteen days within which to put in an answer to the cross-bill or a demurrer within five days, at their option, and in case they shall demur the demurrer shall stand for argument at any time after five days from the filing of the same, to be called up by either party.

2731–2735 [Affidavit of H. M. Duffield, demurrer of Hunt & Eschleman to amended cross-bill, submission of demurrer, & order overruling demurrer, omitted per stipulation of counsel.]

2736 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHELMAN, HENRY S. CUNNINGHAM, PHILIP M. RANNEY, CALVIN HAINES, and GEORGE J. ROBINSON, Defendants.

The joint and several answer of Garret B. Hunt and Jacob Eschleman, two of the defendants, to the amended cross-bill of complaint of David D. Oliver, complainant.

These defendants now and at all times saving and reserving unto themselves all and all manner of benefit and advantage of exception

to the many errors and insufficiencies in the complain-t's said amended cross-bill contain, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answer and say:

They admit that complainant executed the purchase-money mortgage described in said bill, and that he was seized in fee of
2737 said lands described therein, but whether said complainant was seized of any other lands as shown in said bill they know not, but leave complainant to his proof; and these defendants also neither admit nor deny, but leave complainant to his proof of all allegations in said bill concerning the improvements on said lands, and the value of said lands and improvements, except that these defendants deny that said pine lands were worth any such sum as $160,000, as is alleged in said bill.

These defendants, further answering, say that they know nothing of the George J. Robinson partnership, and the exclusion of said complainant by George J. and Henry M. Robinson from the rents, issues, and profits of the said property and business; but they leave complainant to his proof thereof; but these defendants do deny and insist that they never shared, or either of them, the possession and management and profits of said property with said Robinsons and Cunningham, or either of them; never had, and do not now have, any interest or title to said property, except through said purchase-money mortgage, and have never received any profits or moneys from said business either directly or indirectly. These defendants also deny that they ever knew of any arrangement or understanding between said complainant and the defendant Cunningham, whereby said complainant was to convey to said Cunningham all of said lands in trust for the payment of complainant's debts, and among them the mortgage of these defendants as is alleged in said bill, and they aver that they do not believe any such understanding or agreement was ever made between said Cunningham and complainant; and these defendants further show and insist that
2738 they never consented or agreed to any arrangement by which said purchase-money mortgage was to be deferred in any way in its payment until the other debts of complainant were paid; that they never authorized Cunningham to make any such or any arrangement whatever in regard to the payment of said mortgage in any different manner than according to the terms thereof, and in the regular and ordinary way of payment.

These defendants further say that they neither admit nor deny, but leave complainant to his proof of all allegations in said bill, with reference to the deeds made and possession given to said Cunningham, or to his non-execution of said trust, but they say that it was always understood by them that Cunningham only held the title to said property to make a sale thereof for Oliver's benefit on the best terms he could get, or to enable Oliver to make a sale. And these defendants show that after said Cunningham had gone to Ossineke in September, 1868, said complainant always talked with these defendants about his making a sale to some one, and they never heard any claim by complainant that Cunningham held the

lands under any such trust as is set up in said cross-bill. These defendants admit that they knew of an agreement in Buffalo between said Cunningham, representing said complainant and Robinson, Haines and Ranney, but they deny that they ever assented to said agreement, or were asked to do so; they further show that there was nothing in said agreement requiring their assent, or to which their consent or objection would have had any effect or bearing; that said agreement was in writing, and, as these defendants believe and insist, said written agreement was in strict accord-
2739 ance with said complainant's verbal arrangement with Robinson, Haines, and Ranney, the particulars of which these defendants knew both from Oliver's statements to them of what the arrangement was to be and from being present at some of the conferences between the parties; that the gist of said agreement was a sale by Cunningham, as Oliver's representative and with his authority and consent, of the lands herein specified to said Robinson, Haines, and Ranney, subject to certain incumbrances and claims, among them these defendants' mortgage; and these defendants aver, on information and belief, that there was no agreement on the part of said Robinson, Haines, and Ranney to pay said purchase-money mortgage, and they deny positively that they ever knew of any such arrangement, or ever agreed to look to Robinson, Haines, and Ranney for the payment of said mortgage and release Oliver, or that there was ever any arrangement in Buffalo or elsewhere to which they ever gave their consent or ever had knowledge of which in any way bound them or called upon them to delay the foreclosure of said mortgage, or by which their right to purchase the same according to its terms was in any way effected or limited. And these defendants further show that after said agreement was executed and completed and said complainant was aware of its contents he told this defendant, Hunt, that if he had all the money he could carry he would not take the property back and pay off the claims against it; and that he engaged defendant Hunt to go and foreclose this purchase-money mortgage, and was very importunate that he should do so at once, and that he brought up to Buffalo within the thirty
2740 days' limitation in said agreement two gentlemen to buy the property—one of them named Wheeler, but whose residence these defendants do not recall, and another named Western, from Painted Post, in New York; that complainant offered them the property on the same terms that Robinson, Haines, and Ranney took it, but, after looking into it, they refused to take it.

And these defendants deny that they, or either of them, have now or ever had any interest in any firm or partnership between themselves, or either of them, and Cunningham, Robinson, George J. or Henry M., Haines, and Ranney, or with any of them, and with said property and business of said Oliver, as charged in said amended cross-bill; and they deny, on information and belief, that any such firm as the Ossineke Lumber Company ever had possession of his lands and business.

And these defendants positively deny that there is or ever was any conspiracy and agreement between them and George J. Robin-

son, Henry M. Robinson, Calvin Haines, Philip M. Ranney, and Henry S. Cunningham, or either of or any of them, to swindle and defraud said Oliver, as charged in said bill. They deny that Henry S. Cunningham assigned to them his interest in said purchase-money mortgage by an antedated instrument of assignment with a false certificate of acknowledgment; but they aver that said assignment was made on the day when the same bears date, and that Cunningham was in Buffalo, and not in Alpena county, Michigan, on said second of September, 1868.

And these defendants further show that with the exception
2741 of said assignment of said Cunningham's interest in said purchase-money mortgage they had received and accepted no assignments of any obligations of said Oliver or said Hawkins which were not made under and in accoreance with terms of the Buffalo agreement; they deny that they have commenced any suits at law against said Oliver.

And these defendants aver that they have never received any payments or any moneys or profits which ought to be or were applied on said mortgage except the sum endorsed thereon as paid for interest; that they have always treated said Oliver with great fairness and indulgence, and although this mortgage was given for the whole of the purchase-price of said lands, they not receiving a dollar in cash therefor besides said mortgage, yet they have waited long before foreclosing said mortgage.

And these defendants deny all unlawful combination and confederacy in the said bill charged. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

GARRET B. HUNT.
JACOB ESCHLEMAN.

D. B. & H. M. DUFFIELD,
Solicitors for Defendants.
D. BETHUNE DUFFIELD,
Of Counsel.

NORTHERN DISTRICT OF NEW YORK:

On this 13th day of February, A. D. 1871, before me, a commissioner of the circuit court of said district, personally ap-
2742 peared the above-named Garret B. Hunt and Jacob Eschleman, and severally made oath that they had heard read the foregoing bill, and know the contents thereof, and that the same is true of their own knowledge, except as to matters therein stated to be on their own information and belief, and as to those matters they believe it to be true.

JAMES SHELDON,
United States Commissioner, Northern Dist. of New York.

2743 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, HENRY S. CUNNINGHAM, PHILIP M. RANNEY, CALVIN HAINES, and GEORGE S. ROBINSON, Defendants.

The several answers of Henry S. Cunningham, one of the defendants, to the amended cross-bill of David D. Oliver, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiences in the complainant's said amended cross-bill contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says:

1. That he admits that said complainant executed the purchase-money mortgage, as stated in said amended cross-bill, and that he was seized in fee of the lands described in said mortgage; but
2744 as to said complainant's alleged possession of and equitable title to the lands in "Schedule B," this defendant knows nothing except as hereinafter stated.

2. Defendant also admits that Devil river flows through part of said lands described in said mortgage, and that there is thereon a mill-dam and a water mill; but defendant insists that said water mill was of little use except in fall and spring, on account of there not being water enough to float the logs, and also for milling purposes at the same time, and after the erection of said steam saw-mill the water mill was of no value whatever.

3. This defendant admits that there was on said lands in the year 1868 a steam saw-mill, a dock, and some other improvements and fixtures, but this defendant does not know what they cost, and avers that the dock was not completed. Neither was the saw-mill in any kind of perfectness, and there was no gang of saws therein, and only four boilers set; while the said mill was planned for the use of a gang of saws and for the use of eight (8) boilers.

4. This defendant denies the values of the lands and improvements as specifically stated in said bill, and insists that the same are exaggerated and fanciful; and this defendant avers that said water mill, in connection with the steam saw-mill was actually worth nothing whatever; that said mill-dam, in connection with the steam mill, was not worth more than five hundred dollars. The said steam mill in the fall of 1868, with only four boilers in it, and in the state in which it then was, was not worth more than $20,000; that the lands on which said mill was situate, with the other
2745 improvements besides the mills and dam, were not worth over seven or eight thousand dollars; that the pine lands were worth in the fall of '68 about $50,000.

5. This defendant, further answering, says he does not know whether or not said company formed any partnership with said Hawkins or not, or as to his conducting said business, but he admits, on infor-

mation and belief, the Geo. J. Robinson partnership; but whether H. M. Robinson furnished the means for his son the defendant does not know, but leaves complainant to his proof; and as to the exclusion of said complainant from possession and participation of profits by George J. or Henry M. Robinson, this defendant knows nothing except the statements of said complainant.

6. And this defendant, further answering, denies positively that he made any such arrangement with said Oliver as stated in said bill; and that complainant should convey to him his interest in all of said lands in trust to secure the payment of his debts, and he further denies that he agreed that in case complainant should make such conveyance to him of said lands, and other lands to the amount of 6,000 acres, together with his personal property and his interest in the personal estate of such partnership, that he, this defendant, would take the property and would assume the place and interest of complainant in such partnership, and make the necessary advances of money from time to time as the same was needed in said business, and would convert the personal property, logs and lumber, into money speedily, and would aid and assist with his own means in getting out logs for the next summers' operations, and
2746 would manage the affairs of the partnership with care, prudence, and economy; would pay off all the said liabilities of complainant, and when the same were paid convey back to complainant all of the undivided one-half of said lands in towns. 28 and 29 north, range 8 east, and all the lands deeded to him outside said towns., and would convey the undivided fourth of all said lands in towns. 28 and 29 to said George W. Hawkins, for which said Hawkins had agreed to pay complainant $35,000. That Hawkins was to have the management of the business, and the proceeds of said one-fourth interest for his services. And this defendant further denies that it was expected that the personal property would be rapidly converted into cash, and all cash so received applied to the payment of complainant's debts as speedily as possible; and that the Hunt, Cunningham and Eschleman mortgage should be deferred in its payment until all the other of the complainant's debts were paid. And this defendant denies that any such agreement, or any agreement of like nature, or containing any of the above provisions, was ever entered into by him, or any such understanding ever had between him and said Oliver, nor did he ever do any act or make any statements from which said Oliver could be warranted in inferring any such arrangement, but that the deeds which were given him by Oliver, as hereinafter stated, were given in the terms and for the purposes hereinafter stated, and for no other. And that this defendant avers that at the time of this visit of his to Ossineke, said assignment of his interest in said purchase-money mortgage had, in fact, been made, and that this defendant himself informed Oliver of it.

2747 This defendant, further answering, admits that said complainant conveyed all the lands described in "Schedules D, E, F, and G," annexed to said bill of complainant to this defendant; that he also assigned the Preston contract and the George J. Robin-

son bond and mortgage; he also admits that said complainant made a bill of sale of his interest in all his personal estate of the partnership of Oliver & Robinson, but this defendant avers that he has since discovered that said Oliver had no title whatever to hardly any of the lands embraced in his said deeds, which were not covered by the said purchase-money mortgage, or other mortgages, to their full value, and were situated outside of towns. 28 and 29 north, range eight east, and this defendant denies that said deeds and other conveyances were made on the 3d day of September, A. D. 1868, or that he was in Alpena county on that day, but avers that said deeds were made on the 7th or 8th of September, 1868, and not sooner; that they were left for record on the day they were made by this defendant and Oliver on their way down from Ossineke to Saginaw, and this defendant avers that said deeds are dated back by Oliver to the 3d of September, A. D. 1868; that said Oliver wrote all of said deeds with his own hand, and filled out the certificates of acknowledgment in his own handwriting, date and all, and all the person taking the acknowledgment did was to sign his name; that said Oliver talked to the defendant about dating these deeds back to September 3d to cut off some process which some Detroit and Saginaw parties had threatened to issue, and which he feared might have been
2748 issued or served; and this defendant, further answering, denies, emphatically, that these deeds and conveyances were made in pursuance of any such understanding or arrangement, as alleged in said bill, and avers that the manner in which, and purposes for which, said Oliver made said deeds and conveyances to him were as follows: The complainant had, through almost the entire summer of 1868, been continually at Buffalo and vicinity, and much of the time boarded upon the defendant Hunt, and was all time urging this defendant to take hold and help complainant save the property from a sacrifice; that finally, after an ineffectual effort on Oliver's part to get E. & G. R. Haines and C. Haines & Co. and several other parties to take the property, this defendant consented to go to Ossineke, as Oliver requested; that Oliver represented to defendant that the property was very badly incumbered; his debts were numerous, and he was fearful he would be thrown into bankruptcy, or that an effort would be made to do the same and his property sacrificed to pay incumbrances and debts; that before defendant went to Ossineke he had gone with Oliver to some parties, and sent him to others to try and effect a sale of this property; that on arriving at Ossineke this defendant looked into said Oliver's affairs with him, but did not go over the property at all; that he told Oliver he thought he (Oliver) was so involved he could not handle it at all so as to save anything to himself out of it, and defendant could not advise him any way out; that Oliver had fanciful and exaggerated ideas of the value of this property, and insisted that he could sell his interest for enough to pay his debts all up, and give him something besides, if he could only get time to turn him-
2749 self in; that he, said Oliver, finally suggested to this defendant to allow him (Oliver) to deed to this defendant all his interest in the lands and personal partnership property, so as to get

it where his creditors could not force the collection of their debts speedily, and he could get time to turn himself in; and that defendant could perhaps effect a sale for him, and meantime Oliver would try and sell out his interest to some third party, said complainant insisting that all he wanted was time, and he would effect a sale at advantageous prices, which would clear up his debts and give him something besides for himself; that this defendant told him he would make no promises, and would not commit himself to do anything; that as it stood there was certainly nothing in it for him (Oliver), and he didn't know whether it would bring him anything if this defendant took it, but that if he wanted this defendant would take a deed from him and do the best he could in the way of selling it, and that meantime he would go and try to effect a sale; that upon this Oliver made said deeds; that nothing except the effecting a sale of Oliver's interest was ever understood, mentioned to be the object of said deeds, and as evidence that a sale was intended, and that he had no thought of running the business, this defendant shews that immediately upon receiving said conveyances instead of remaining and asserting with George J. Robinson his rights as Oliver's grantee, this defendant and said Oliver left said Alpena county together, and Oliver went right to work at Flint to try and sell said property; and this defendant shews here in court four letters
2750 written just after these conveyances by said Oliver to this defendant, and admitting and conclusively shewing that said complainant had no idea of defendant's managing such business, or of anything except a sale of said property, copies of which letters this defendant has annexed, marked Exhibits "A," "B," "C," "D," and prays leave to refer thereto.

This defendant admits that there was no consideration for said conveyances from Oliver to him; that Oliver deeded the property, subject to the debts named, but this defendant denies that he ever agreed to pay the same or any of them, or that said conveyances were in trust for any other purposes than hereinabove stated.

And this defendant admits that there was no written understanding between complainant and him, but avers that the only one was on parole and as just hereinbefore stated. And this defendant denies that he ever accepted any such trust as claimed in said bill, and he also denies that immediately after said deeds he entered into possession and use of said property with George J. Robinson, or that he ever entered into possession with George J. Robinson until he became a partner with Robinson, Haines & Ranney, as hereinafter stated. He also denies that he commenced making money for himself out of the estate, and avers that he has never made any money out of said estate either while holding said title of Oliver or since as partner with Robinson, Haines & Ranney. This defendant admits that he telegraphed complainant to come to Buffalo; that such telegraph was in consequence of propositions which had been made to this defendant by Calvin Haines and Philip M. Ranney to
2751 purchase the interest which Oliver had conveyed to this defendant, which proposals had become sufficiently definite and reasonable to authorize him to ask Oliver to come down; but this

defendant denies that he pretended he would be unable to execute any trust, or that anything was claimed or said by Oliver in relation to any trust. And he also denies that he ever advised or requested Oliver to sell to George J. Robinson, Calvin Haines, and Philip M. Ranney. And this defendant avers, to the best of his recollection and belief, that Oliver got to Buffalo about a week before October 3d, 1868, and during this time the sale to Robinson, Haines, and Ranney, was fully canvassed between Oliver and the parties thereto; and during this time also Oliver had two gentlemen looking at the property and trying to get them to buy it, to whom he offered the lands on the same terms as Robinson, Haines, and Ranney, but they declined to take it.

And this defendant, further answering, shows that Oliver, about the 3d of October, A. D. 1868, did assent to a sale by this defendant to said Robinson, Haines, and Ranney of said property, the agreement for which was drawn in the office of B. H. Williams, in Buffalo, on said October 3d, 1868; that said complainant did not wait until the contract was put in writing, but left Geo. W. Hawkins to represent him; and this defendant denies that this written agreement was not in accordance with the verbal understanding, and he avers that there were no alterations whatever made between said verbal arrangements and the writing; and he also denies that complainant was ever refused a copy thereof, or that Oliver
2752 upon reading it in Williams' office, or at any time, complained of it, but on the contrary, after reading said agreement said Oliver told Williams and Cunningham that he was satisfied with it, and that said Oliver told defendants, Hunt and Cunningham, that if he had as much money as he could carry he wouldn't take back the property and pay the debts of the concern; that he could do better with the money. And this defendant further shows that the statement of said agreement as made by said complainant in his amended cross-bill is incorrect and false; that there is no excuse therefor, because, as defendant is informed, said Oliver or his counsel have been for about a year in possession of a copy of said agreement, and this defendant annexes a copy of said agreement to this his answer, marked "Schedule E," to which he prays leave to refer; that the thirty days in which said agreement was to be performed was put thereon at the request and for the benefit of said Oliver, so that he might consummate if possible a better sale during that period; that about the expiration of thirty days (but not before) this defendant conveyed to said Robinson, Haines, and Ranney, but this defendant denies that said conveyance was without the performance of any of the conditions of said agreement, but on the contrary asserts that all the conditions to be performed by Robinson, Haines, and Ranney within the time which had elapsed had been performed, and this defendant avers, to the best of his knowledge and belief, that all the conditions of said agreement have been substantially performed, so far as was in defendant's power, but if any have not been fulfilled, this defendant avers it is because said Oliver has never
2753 requested the performance of them; but, on the contrary, after defendants, Robinson, Haines, and Ranney and this defendant

had expended large sums of money on said property in permanent improvements began to assert, and has asserted everywhere, that such agreement was a fraud upon him and null and void; and this defendant avers that, although it was no part of said agreement, yet he has conveyed to said Oliver all the lands outside of said towns, 28 and 29, which said Oliver has requested to be conveyed as desired by said Oliver, as by reference to said letter of said Oliver marked "Schedule D" will more fully appear; and this defendant is ready and willing and hereby offers to deed to said Oliver or such person as he may select all lands not covered by said agreement, and deed to Robinson, Haines, and Ranney the title to which may be in this defendant through the conveyances of said Oliver to this defendant, and this defendant avers that in all the matters of this agreement for a sale to Robinson, Haines, and Ranney he has endeavored to do everything in his power for said complainant's interests and to procure him the best terms he could, and that he, this defendant, has received no benefit or advantage to himself personally, or in any way, by reason of or growing out of said agreement, nor was the same founded on or accompanied with any collusion between this defendant and said grantees to cheat or defraud or in any way injure complainant, and this defendant denies that he let said Robinson, Haines, and Ranney into possession and use of said property with himself and George J. Robinson, and says he
2754 never had any possession with George J. Robinson, as already hereinbefore stated; and this defendant admits that there was a copartnership between George J. Robinson, Calvin Haines, and Philip Ranney; and he also admits that in January, 1869, he purchased an interest in said partnership, and still is a partner therein, but he insists that said purchase of said interest was a subsequent and independent transaction from said sale to Robinson, Haines, and Ranney, and that there was no arrangement, understanding, or agreement at the time of or before such sale that this defendant should become a partner with said Robinson, Haines, and Ranney after they had completed their purchase of Oliver; and this defendant denies that Garret B. Hunt, Jacob Eschleman, or Henry M. Robinson, or either of them, are or ever were partners with Cunningham, Robinson, Haines, and Ranney in said business, or that any such company was ever formed by any of said persons as the Ossineke Lumber Company.

This defendant, further answering, says he knows nothing of the alleged agreement between himself, Robinson, Haines, Ranney, and Oliver, as to Oliver's quit claim; that he has some recollection of a written agreement between Oliver, Robinson, Haines, and Ranney, but does not think he was himself a party or recollects the terms or objects of it. This defendant further shows that he does not recollect the exact date of his deed to Robinson, Haines, and Ranney, but avers that if it was dated on October 3rd, 1868, it was antedated, so as to bear date on the same day as the agreement under which it was given; that he cannot understand said
2755 complainant's allegation as to his quit-claim deed, but he avers that the same was given by Oliver after seeing and

reading the Buffalo agreement, and with a full knowledge of its terms, and in confirmation of said deed by this defendant under said agreement.

And this defendant, further answering, denies positively any conspiracy or agreement to swindle and defraud said complainant by or between George J. and Henry M. Robinson, Garret B. Hunt, Jacob B. Eschleman, Calvin Haines, Philip M. Ranney and this defendant, or either of them, and he further denies that he obtained said conveyances and fraudulently conveyed complainant's property, as averred in said bill. He admits he did not put Hawkins in charge of said business, and made no effort to pay off the said incumbrances, because he said it was never his duty, and he never agreed so to do. He also denies that he assigned his interest in the Hunt and Eschleman mortgage by an antedated assignment and with a false certificate of acknowledgment, and he avers that the said assignment was made on the day it bears date, and previous to his going to Ossineke in September, 1868. He also denies that complainant's interest in said mill property is held by force and fraud, without the payment of any consideration therefor, and that Henry M. Robinson, Hunt, and Eschleman have any interest therein. He admits that Hunt and Eschleman knew of the Buffalo agreement, but denies that they agreed in any way to release Oliver from the liability of said mortgage, or to postpone or release their right to foreclose the said mortgage at any time, and he denies that
2756 this foreclosure is in fraud of the Buffalo agreement. He denies that said pine lands have been wastefully lumbered, or that the cutting thereof has been other than all lumbermen practice, and denies the land has been injured any more than any pine land is depreciated by taking the pine off it. He denies that any assignments of Oliver's obligations have been procured by him to be made to Hunt and Eschleman in order that he might control them and harass and annoy said complainant. He further shows that he knows nothing of any bill filed in a State court by said Oliver against the defendants herein, and has not heard of such bill or been served with any process therein.

This defendant, further answering, says that at the time of the sale of said property by Oliver, through him to said Robinson, Haines, and Ranney, the steam saw mill and docks, etc., were in a very bad and broken down and unfinished state, and that said firm of Robinson, Haines & Ranney, and after them the firm of Cunningham, Robinson, Haines & Ranney, were compelled, in order to put the property in shape to return any income at all, to put upon said property new and further machinery and improvements to a very large amount, and that thus far the profits and rents and issues of said property have not, after deducting the running expenses of said business, amounted to as much as has been put upon said lands in the shape of permanent improvements to the realty.

And this defendant denies all unlawful combination and confederacy in the said bill charged, all which matters and things
2757 this defendant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence

dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

(Signed) HENRY S. CUNNINGHAM.
D. B. & H. M. DUFFIELD,
Solicitors for Defendant.
D. BETHUNE DUFFIELD,
Of Counsel.

NORTHERN DISTRICT OF NEW YORK, *ss:*

On this fifteenth day of February, A. D. 1871, personally appeared before me, the undersigned, a commissioner of the circuit court for said district, Henry S. Cunningham, above named, and made oath that he had read the foregoing answer, and knew the contents thereof, and that the matters therein stated are true of his own knowledge, except as to those matters which are therein stated to be on information and belief, and that as to those matters he believes it to be true.

(Signed) JAMES SHELDON,
United States Commissioner.

2758 SCHEDULE A.

(Copy.)

EAST SAGINAW, MICH., *Sept. 12th,* 1868.

H. S. Cunningham.

MY DEAR SIR: I have seen Patrick, and he says those eastern parties are coming on, and he thinks will go up Tuesday next. Another party wants the property, by the name of Cameron, who lives at the Flint. I had an introduction to him and had a long talk. He wants Patrick to put off the eastern parties until he looks it over. Patrick referred it to me, and told him it was only fair that the eastern parties should have a chance, and to let them come along, which was agreed to. I expect three parties next week. I think the sale sure, but am sorry I made an offer. I think I could have got more for it. I will try and keep you posted in regard to matters here, and hope to receive the same from you.

Yours, truly,
(Sig'd) DAVID D. OLIVER.

2759 SCHEDULE B.

(Copy.)

OSSINEKE, *Oct. 6th,* 1868.

H. S. Cunningham, Esqr.

DEAR SIR: When I got to Alpena I met Mr. Thurber waiting for me. He has looked over the property and is well pleased with it, and will go to Harrisville to-morrow where he expects to either to meet the other parties or to hear from them; and I think there is no doubt about selling. Mr. C. thinks he will know inside of the ten days. Things are going to wreck as fast as it can. Will report progress.

Yours,
(Sig'd) DAVID D. OLIVER.

SCHEDULE C.

(Copy.)

BAY CITY, *Sept. 15th*, '68.

H. S. Cunningham, Esq.

DEAR SIR: I saw G. J. Robinson this morning at the Frazier House, and he comes down mad and says he will not stay in the concern with any one. He has got a letter from Haines and
2760 he has got a new idea, and they are intending to play ugly if they can. They have agreed to meet in Detroit on the 17th. Either Robinson or Haines must be reconciled, and then they can do no harm. I expect parties to go up to-day to look at the property, and no doubt can sell and have the thing closed up this month. If you can hold them down there until next week all will be well.

Yours, truly,

(Sig'd) DAVID D. OLIVER.

SCHEDULE D.

(Copy.)

BUFFALO, *Nov. 26th*, 1868.

H. S. Cunningham, Esq.

DEAR SIR: I have seen Mr. Mason and he says he wants the land but has no money, and does not know what the land is worth. He said he would do this: That he would give me his note for seven hundred dollars for sixty days, and he would hold the land until it could be looked over, and if it was what — looked to be he would buy all I had round the shore. I want you to make out a deed of the following lands; have it made to blank, of Detroit, Michigan, and the name can be put in here. Execute the deed in full excepting the person's name and stamps, and send it as soon as you can to me at Michigan Exchange. If I can get Mr. Mason's note for $700,
2761 I can get Preston to cash it for me, and will be able to let you have $50, and send George $300 and, perhaps, more, and that will help him some now, and then I can get some more by and by. The lands are as follows: In township 30 north, range 8 east, section 31, S. E. quarter of S. W. quarter. Look and see if I deeded this to you. I think I did not, for I did not know that I owned it until I found it in the U. S. Land Office. In the above town. and range—

Section 31, S. W. qr. of N. E. qr.; the N. half of S. E. qr.; S. E. qr. of S. E. qr., Preston lands.

Section 32, S. W. qr. of S. W. qr. I deeded to you; E. half of S. W. qr., Preston lands; S. W. qr. of S. E. qr., Preston lands.

You may see me down again to Buffalo before I go up. Parties have just come down from the marble quarry with nice specimens, and I am working roots in the matter; and you tell Colgrove that I may be down to see him, and if he wants to make something he will probably have a chance to do so. I think it is a good thing. There

is a good deal of stir here, but money is very tight. Richard will be himself again in a short time.

Yours, truly,

(Sig'd) DAVID D. OLIVER.

2762–2767 [Schedule E to answer of H. S. Cunningham omitted per stipulation of counsel.]

2768 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

DAVID D. OLIVER, Complainant,

vs.

GARRET B. HUNT, JACOB ESCHLEMAN, HENRY S. CUNNINGHAM, PHILIP M. RANNEY, CALVIN HAINES, and GEORGE J. ROBINSON, Defendants

The joint and several answer of Calvin Haines and Philip M. Ranney to the amended cross-bill of complaint of David D. Oliver, complainant.

These defendants, now and at all times reserving and saving unto themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said amended cross-bill contained, for answer thereunto or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answer and say: That they deny that the lands and premises described as belonging to said complainants with the improvements thereon, were anything like the value, given to them by complainant in his amended cross-bill.

2769 They admit that Oliver and Hawkins became indebted to them for moneys advanced, and that Oliver gave his mortgage to secure the same on some of said pine lands, and there was due on the same at the time of the agreement with Cunningham for Oliver at Buffalo, as hereinafter stated, about the sum of nineteen thousand dollars.

These defendants, further answering admit that they made an agreement in Buffalo with said Cunningham for the purchase of all land deeeded to said Cunningham by said Oliver, lying in towns. 28 and 29 north, range 8 east, and all personal property conveyed to him by said Oliver; that they deny that the same was made October 10th, 1868, but aver that it was made October 3d, 1868, in the office of B. H. Williams, an attorney and counsellor at law, of Buffalo, New York, and they further show that for at least a week prior to said execution of said written contract said Oliver was in Buffalo, New York, and frequently, thoroughly, and fully talked over and conversed with these defendants and George J. Robinson, and somewhat with Cunningham, the terms of said bargain or sale; and that the terms and conditions as finally agreed upon were perfectly satisfactory to said Oliver personally, and assented to by him; that these defendants and said George J. Robinson would not have treated with Cunningham in Oliver's absence if they had been desired or requested to do so, but that no such request was ever made

of them by Cunningham or Oliver. And as soon as they arrived at terms approaching definiteness said Cunningham sent for said Oliver, who came down and personally conducted all future negotiations; that if said Oliver did not remain until said agree-
2770 ment was reduced to writing, he left said George W. Hawkins to represent him; and these defendants insist and positively deny that said agreement as reduced to writing was in any way different from the verbal understanding and arrangement to which said Oliver gave his assent, or that said verbal understanding and arrangement was in any way altered after or before said Oliver left.

And these defendants, further answering, show that the statement of the terms of said agreement, as contained in said bill, is entirely inaccurate and false, and they pray leave to refer the court to a copy of said agreement hereto annexed and marked "Schedule A." And they further show that said period of thirty days in said agreement provided in which said Cunningham had the option to pay these defendants and George J. Robinson his indebtedness to them was put in at the request and for the benefit of said Oliver to enable him, if he could to make a better sale; that after the expiration of said thirty days, and not before, said Cunningham conveyed to these defendants and defendant Robinson all lands and personal property included in said agreement, but they aver that all the conditions which were to be performed at the time of said conveyance had been by them performed, so far as they knew or were requested so to do; and they are now, and always hitherto have been, ready and willing to carry out or perform any and all the conditions of said agreement upon request of said Oliver, but that said Oliver has never requested any such thing of them; but after these defendants and defendant Robinson and said Cunningham had made large expenditures on said property, in adding thereto valuable and
2771 permanent improvements, said Oliver began to assert, as defendants believe, in the hope and with the view of getting back said property, that such agreement was a fraud upon him, and to claim that the same was invalid and that he should get his property back from these defendants.

And these defendants, further answering, admit that about the month of January, A. D. 1869, the defendant, Cunningham, went into the firm of Robinson, Haines & Ranney, but they deny that his coming into said firm was in pursuance or by virtue of any arrangement or agreement or collusion between said Cunningham and these defendants at the time of said sale from him to them of Oliver's interest, or at the time of the agreement therefor in Buffalo, or at any time before that.

And these defendants deny any and all conspiracy or agreement alleged to exist between them and said Hunt, Eschleman, and Cunningham, and George J. and Henry M. Robinson, or any or either of them, to swindle and defraud said complainant. They deny that said defendants, Hunt and Eschleman, and said Henry M. Robinson, or either of them, were ever partners with these defendants in the business at Ossineke, or on said Oliver's property, as alleged in said

bill. They deny that they, together with any one or alone, hold by force and fraud said Oliver's interest in said mill property without the payment of any consideration therefor. They deny that Hunt and Eschleman have any interest with them in said firm or that they belong to any firm called the Ossineke Lumber Company. They deny that they or their firm have committed waste on said lands and selected the best pine
2772 or lumbered in strips so as to realize the most money in the shortest time, and are now greatly injuring said property. They deny that they have made any assignments of mortgages by procurement of Henry S. Cunningham, or in order to put them where the said Cunningham could control them; and they deny all unlawful combination and confederacy in the said bill charged. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct; and pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

(Signed) CALVIN HAYNES.
(Signed) PHILIP M. RANNEY.

D. B. & H. M. DUFFIELD,
Solicitors for Defendants, Haines and Ranney.
D. BETHUNE DUFFIELD,
Of Counsel.

NORTHERN DISTRICT OF NEW YORK, *ss:*

On this fourteenth day of February, A. D. 1871, before me, a commissioner of the circuit court of the said district, personally appeared the above-named Calvin Haines and Philip M. Ranney, and severally made oath that they had heard read the foregoing answer by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to matter therein stated to be on information and belief, and as to these matters they believe it to be true.

JAMES SHELDON,
United States Commissioner, Northern Dist. of New York.

2773–2778 [Schedule A to answer of Haines & Ranney omitted, per stipulation of counsel.]

2779 In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

DANID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, HENRY L. CUNNINGHAM, Philip M. Ranney, Calvin Haines, and George J. Robinson, Defendants.

The several answer of George J. Robinson, one of the defendants, to the amended cross-bill of David D. Oliver, complainant.

This defendant now and at all times hereafter, saving and reserv-

ing to himself all manner of benefit and advantage of exception to the many errors and insufficiences in the complainant's said amended cross-bill contained for answer thereto, or unto so much or such part thereof as this defendant is advised is material for him to make answer unto, answers and says:

That he admits that said complainant executed and delivered his purchase-money mortgage as stated in said amended cross-bill, and that he was, at the date of said mortgage, seized in fee of the lands described in said mortgage, but as to said complainant's
2780 equitable titles to the lands in "Schedule B," this defendant knows nothing, except as may be hereinafter stated. This defendant further admits that Devil river flows through part of said lands, but denies that said Oliver erected a valuable water mill and dam on said river, but avers in information and belief that the same was erected many years since, and before said Oliver's acquisition of said property, and is now in such a state of dilapidation and decay as to be worthless to any one.

This defendant further admits that there was on said lands in the year 1868 a steam saw-mill and a dock and some other improvements and fixtures, but the exact cost of the same or the amount actually paid therefor by said Oliver are not known to this defendant; and this defendant avers that the dock was by no means completed, nor was the said steam mill in any kind of perfectness, and there was no gang of saws therein and only four boilers set, while the said mill was planned for a gang of saws and for the use of eight boilers.

This defendant denies the alleged values of said lands and improvements as specified and stated in said amended cross-bill, and insists that the same are so greatly exaggerated as to be fanciful in the estimates put upon them by said complainant, and this defendant avers that said water mill, in connection with said steam mill, was really worth nothing, that the mill dam connected therewith was really worth not more than a $1,000; and that the steam mill with only four boilers in the fall of 1868, and in the state in which it then was, was not worth more than $20,000; that the land on which the said mill was situated, with the other improve-
2781 ments besides the mill and dam, were not worth over $7,000 or $8,000, and that the pine lands were not, in the fall of 1868, worth over $50,000, if so much as $30,000.

This defendant, further answering, says he knows nothing as to the alleged transactions of said Oliver with said Hawkins, or with Haines and Ranney, or E. & G. R. Haines, or James B. Wayne, or James H. Hill, as in said bill stated, except as to such transactions as were had between the firm of Oliver & Robinson, and James B. Wayne, and E. & G. R. Haines after the formation of said firm between this defendant and Oliver.

This defendant denies the allegations of said complainant that he, this defendant, with his father, Henry M. Robinson, fraudulently obtained exclusive possession of said partnership property and business, and thenceforward and until now excluded said Oliver from all participation in the issues and profits of said property, and that

they (this defendant and said Henry M. Robinson) ultimately shared the possession, management, and profits of said property with said defendants, Hunt, Eschleman, and Cunningham, and the other defendants in a fraudulent manner, as in said amended cross-bill is alleged; but instead of such being the case this defendant avers that he was induced to enter into partnership with said Oliver by fraudulent representations made by said Oliver to this defendant as to the amount and values of his said property, especially as to the amount of his actual indebtedness and his available capital; and that after this defendant had paid in his said capital said Oliver repeatedly and secretly diverted portions of the means and
2782 assets and product of said partnership to the payment of old indebtedness of his own, the knowledge of which he had fraudulently suppressed from this defendant, and that this was so recklessly and wilfully done, and against the protest of this defendant, that he was compelled in his own protection and in protection of the interests of the creditors of said firm of Oliver & Robinson to assume the active control and management of said business, and that he did so for the further reason that said Oliver was absent most of the time from Ossineke, and raised no means to carry on the business of said firm, and that his acts tended more to embarrass than aid the said business; that all and every of this defendant's transactions were entered upon the books of said concern, which were accessible at all times to the creditors of said firm as well as to said Oliver so long as he remained connected with said partnership, and that no means were diverted by this defendant from said firm, but large means were raised by him for its benefit; and this defendant denies any and all fraudulent usurpation of property of said Oliver in connection with said copartnership of Oliver & Robinson, as in said bill is alleged; that this defendant continued to carry on the business of said firm to the best of his ability, borrowing money and doing all else in his power to maintain the credit and standing until said Oliver's interest ceased in said concern.

This defendant admits that said Henry S. Cunningham, some time in the month of September, 1868, visited Ossineke and looked over the property in connection with said Oliver, and about that time entered into some arrangement with said Oliver by
2783 which the latter conveyed to him and Cunningham, all of his, said Oliver's, interest in said real and personal property at Ossineke, and also his interest in certain other lands than those upon which said mill was situated and connected, but as this defendant was not a party thereto nor fully cognizant of the transaction in its details he cannot here admit, of his own knowledge, anything in said amended cross-bill as stated beyond what appears of record in said conveyance or conveyances then made by said Oliver and wife to said Cunningham.

But this defendant expressly denies that under and in pursuance of such arrangement or transaction between said Cunningham and Oliver the said Cunningham became a partner with this defendant in said business or shared in anywise in its liabilities and duties or

participated in its profits, products, or earnings, and that all allegations in said amended cross-bill to that effect are false and untrue.

This defendant, further answering, says that immediately after these conveyances by said Oliver to said Cunningham the latter left Ossineke in company with said Oliver, and thereafter (but exactly at what time defendant cannot say, although he thinks it was on the 9th day of said September, 1868,) negotiations were commenced for the sale to C. Haines & Co. and this defendant of said Oliver's interest in said property, real and personal, in towns. 28 and 29 north, range 8 east, as the same had been conveyed to said Cunningham, as aforesaid; that although this defendant and said Haines & Co. did not really want to purchase said interest, yet on reflection
2784 that its acquisition might enable them to influence the advance of capital necessary to put up the improvements requisite to develop the property, they did on the 3d of October, 1868, consummate an agreement, in writing, with said Cunningham for the purchase thereof; that this defendant has not a copy of said agreement now in his possession, but he respectfully refers this court to the same, alleging on his part that it fairly and fully expressed the verbal understanding and agreement settled upon between said Oliver and this defendant and said Haines & Co. and the said Cunningham, and that said written agreement was in nowise altered or made to express anything different from what had been previously and verbally agreed upon between said Oliver and the other parties named above, and that the averment in said bill to that effect is false and untrue, and that the provision deferring the performance or fulfillment of said agreement was put in at the suggestion of said Oliver and for his benefit, and that said Oliver also agreed on his part to give his own personal deed, with his wife as a party thereto, unto said defendants, C. Haines & Co. for said property, and in conformation and ratification of the deed of said Cunningham, which deed was about one month after or thereabouts, duly executed and delivered by him, the said Oliver, in pursuance of his said engagement, and the same was thereupon placed on record, and a copy of which deed is hereto annexed; and that afterwards, on the 21st of January, 1868, said deed was submitted to said Oliver with the request that he would procure his wife'e signature and acknowledgment to the same; that he there read over said deed, said it was all
2785 right, and did so procure his wife's signature and acknowledgment on the day last aforesaid, before one Lemuel Elsworth, a justice of the peace of the county of Alpena, aforesaid.

And this defendant, further answering, denies that said conveyance was made to him, and said C. Haines & Co., without the performance of any of the conditions of said agreement, but, on the contrary, asserts that all the conditions to be performed by this defendant and said C. Haines & Co., were, to the best of his knowledge and belief, duly and fully performed by them, and so far as they were to be performed by said Cunningham, they were, on his part, also performed. But in case there should yet remain anything to be done, on the part of C. Haines & Co. and this defendant, they here admit their readiness and aver their willingness to do any such

unperformed act or acts due from them under said agreement as aforesaid.

And this defendant, further answering, says that after the copart-partnership between him and said C. Haines & Co. and Philip M. Ranney were entered into they took steps for the enlargement of the mill and machinery, and for the general improvement of said property, and they, and after them, the firm of Cunningham, Robinson, Haines & Co., in good faith, expended a very large amount of money thereon, in the aggregate not less than thirty-five thousand dollars, and among such improvements were the following: The steam mill was remodeled by adding new and expensive machinery, and largely increasing the sawing capacity at least four times; the
2786 floatage capacity of the property has been increased by the erection of three valuable dams, large outlays have been made both in clearing out the river and in improving the lands; fine new dwelling-houses have been erected, the old ones have been repaired, and many other minor but expensive improvements have been made at the expense of said new firm.

And this defendant, further answering, says that said Cunningham never was a partner with this defendant in connection with said business until some time in January, 1869, when he purchased an interest in said partnership property of Robinson, Haines & Co., and a new firm was then formed under the name and style of Cunningham, Robinson, Haines & Co., which still continues, and that Garret B. Hunt, Jacob Eschleman, Henry M. Robinson are not, nor are either of them, partners in said firm, nor have they been such partners at any time, nor has any change ever been made in said firm, nor have they ever done business under the name of the "Ossineke Lumber Company," and that the allegations of said Oliver in this behalf probably rest upon the fact that the bags of said firm are marked "Ossineke Mill Company," so that they may be readily identified among those of others who do business with them at the point named.

And this defendant denies all knowledge of any such trust on the part of said Cunningham in behalf of said Oliver, as is set up in said bill, and that so far as the same connected itself with this defendant or his business he never heard of it, nor was any claim under any such trust ever made upon this defendant either by said Cunningham or said Oliver, and this defendant does not believe
2787 that the same ever had an existence, except in the imagination of said Oliver, and that the same has originated with him since the large outlays made on said property by the said last-mentioned firm.

This defendant, further answering, says that the nett profits realized from said business since the purchase of said Oliver's interest, have not been sufficient to reimburse said defendants for the amount so advanced by them in the aforementioned outlays for permanent improvements on said property.

This defendant, further answering, denies positively any such conspiracy or agreement to defraud and swindle said Oliver, as is charged in said bill as existing between all of the said defendants

therein named and this defendant, and he denies any such conspiracy or agreement between himself and any of said defendants; and he also denies that said property is fraudulently and by force held against said Oliver by said defendants, or that said Henry M. Robinson, or said Hunt and Eschleman, have any interest therein, except such as held by the last two named as mortgagees thereof, though this defendant admits that said Hunt and Eschleman knew of the Buffalo agreement, but he at the same time denies that they at the time of the entering into and consummation of said agreement, agreed on their part to release said Oliver in any way from the liability of his said bond and mortgage, or to defer or release their right to foreclose the said mortgage at any time.

And this defendant, further answering, denies that said pine lands have been wastefully lumbered or that the cutting upon the same has been done in any other or different way from that generally pursued by woodsmen in cutting off pine, or that any of the
2788 said lands have been indirectly impaired in value by reason of any unskillful or wasteful cutting thereon beyond the depreciation incident to the removal of the pine timber thereon.

This defendant, further answering, says that he has no knowledge of the filing of any bill by said Oliver for appropriate general relief in the proper State court, and therefore can make no answer in respect to said allegation in said bill contained.

And this defendant denies all unlawful combination and confederacy in the said bill charged, all which matters and things this defendant is ready to aver and maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

(Signed) GEORGE J. ROBINSON.
D. B. & H. M. DUFFIELD,
Solicitors for Defendant.
D. BETHUNE DUFFIELD,
Of Counsel.

STATE OF MICHIGAN, } ss:
Alpena County, }

On this — day of February, A. D. 1871, before me the undersigned, a notary public in and for said county, and United States circuit court commissioner, personally appeared George J. Robinson, who, being duly sworn, made oath and said that he had read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

J. B. TUTTLE,
Notary Public, Alpena County, U. S. C. C. Commissioner.

2789 This indenture, made the twelfth day of November, in the year of our Lord one thousand eight [hundred] and sixty-eight, between David D. Oliver and Sarah A., his wife, of Alpena,

in the State of Michigan, party of the first part, and George J. Robinson, of Alepena aforesaid, and Calvin Haines and Phillip M. Ranney, constituting the firm of C. Haines & Company, of Lockport, New York, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, remised, released, and by these presents do grant, remise, release, and quit claim unto the said parties of the second part, and to the heirs and assigns, forever, all that certain piece or parcel of land situate in section six, of township twenty-eight, range eight east, in the county of Alcona, in the State of Michigan, and being the northeast quarter of the northeast quarter of said section six. Also the following parcels of land situate in township twenty-nine, in said range 8 east, to wit: In section two, the northwest fractional quarter, the north fractional half of the southwest fractional quarter; in section three, the northeast quarter of the southeast quarter, and the southwest quarter of the southeast quarter; in section six, the south-
2790 east quarter of the northwest quarter; in section ten, the northwest quarter, the southwest quarter of the northeast quarter, the east half of the southeast quarter, the southwest quarter of the southeast quarter; in section eleven, the west half of the southwest quarter; in section fifteen, the north half of the northeast quarter; in section twenty-three, the east half of the northeast quarter, the east half of the southeast quarter; in section twenty-eight, the north half of the southwest quarter, together with all lands owned by me in said townships twenty-eight or twenty-nine, or either of them, except the east half of the northwest quarter and the south half of the northeast quarter of section fourteen, in town. twenty-nine, range 8 east, together with the right to run logs through Devil river, over and through any lands owned by said David D. Oliver, on the second day of October, 1868, and for that purpose to dam said river, and to flow any lands that may be necessary for the purpose of running logs or making any boom to hold logs, with the right to enter upon such lands for the purpose of constructing and maintaining such boom or booms—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest of property possession, claims, and demands whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances—

2791 To have and hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs, and assigns, forever.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

(Sig'd) DAVID D. OLIVER,
[WAFER PAPER SEAL.]
SARAH A. OLIVER.
[WAFER PAPER SEAL.]

Signed, sealed, and delivered in presence of—
(Sig'd) O. L. BARTON,
BENJ. H. WILLIAMS,
Witnesses as to David D. Oliver.

H. M. ROBINSON,
SAMUEL ELLSWORTH,
Witnesses as to Sarah A. Oliver.

[Fifty-cent stamp.]

(Copy.)

STATE OF NEW YORK, } ss:
City of Buffalo, Erie County, }

On this twelfth day of November, A. D. 1868, before me, the subscriber, appeared David D. Oliver, who acknowledged that he executed the within instrument and that the same was his free act and deed, and I certify that I know the person who made the said acknowledgement to be the individual described in and who executed the within instrument.

BENJAMIN H. WILLIAMS,
Commissioner of Deeds for City of Buffalo.

(Copy.)

STATE OF NEW YORK, } ss:
Erie County, }

CLERK'S OFFICE.

I, John H. Andrus, clerk of said county, and the courts thereof, do hereby certify that Benjamin H. Williams, whose name is
2792 now subscribed to the proof or acknowledgment of the annexed instrument in writing, was, at the time of taking such acknowledgment, a commissioner of deeds for the city of Buffalo, in said county, duly commissioned, sworn, and authorized to take the same; and further, that I am well acquainted with his handwriting and verily believe that the signature to the said proof or acknowledgment is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county, at Buffalo, this thirteenth day of November, A. D. 1868.

(Sig'd) JOHN H. ANDRUS, *Clerk.*

(Copy.)

STATE OF MICHIGAN, } ss:
County of Alpena, }

On this twenty-first day of January, A. D. 1869, before me personally appeared Sarah A. Oliver, wife of the said David D. Oliver, who executed the within deed, and upon a private examination of the said Sarah, separate and apart from her husband, she, the said Sarah, declared she executed said deed of her own free will, and without fear or compulsion from any one.

(Sig'd) SAMUEL ELLSWORTH,
Justice of the Peace in and for Ossineke Township, Alpena Co., Mich.

2793–2842 [Exceptions to answers, draft of order setting exceptions for hearings, &c., replications to answers, order dismissing exceptions to answers, notice to take oral testimony & service, amendment to motion for receiver, affidavits of Oliver, McMath, Hawkins, Wayne, Gallup, Carter, Leach, Melville, & Rob't. Robinson omitted, per stipulation of counsel.]

2843 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Tuesday, the ninth day of May, in the year one thousand eight hundred and seventy-one.

Present: Honorable John W. Longyear, district judge.

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, PHILIP RANNEY, Calvin Haines, George J. Robinson, Henry S. Cunningham, Defendants. } In Chancery.

The motion for injunction and receiver in this cause, now coming on to be heard, is argued by Mr. Russel in support thereof, and Messrs. D. B. & H. M. Duffield in opposition thereto, and, having been duly considered by the court, is now, by the court, here overruled and denied.

2844–2851 [Subpœna to Kirchner & return, motion & affidavit to enlarge time to take testimony, order enlarging time to take testimony, notes of issue Feb. 23, May 24, & Oct. 19, 1872, & hearing & continuance omitted, per stipulation of counsel.]

2852 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Saturday, the ninth day of November, in the year one thousand eight hundred and seventy-two.

Present: Hon. John W. Longyear, district judge.

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, PHILIP RANNEY, Calvin Haines, George J. Robinson, and Henry S. Cunningham, Defendants. } In Equity. On Cross-bill.

This cause again coming on to be heard, is submitted to the court for decision without further argument.

2853 Circuit Court of the United States for the Eastern District.
In Equity.

GARRET B. HUNT AND JACOB ESCHLEMAN
vs.
DAVID D. OLIVER, SARAH ANN OLIVER, GEORGE J. ROBINSON, CALVIN HAINES, PHILIP M. RANNEY. } No. 1381.

DAVID D. OLIVER
vs.
GARRET B. HUNT, JACOB ESCHLEMAN, PHILIP M. RANNEY, Calvin Haines, George J. Robinson, Henry S. Cunningham. } Cross-bill. No. 1408.

It is hereby stipulated that all the testimony taken in the above-entitled causes phonographically may be considered as taken regularly before a master of the court, and that such testimony, and all other testimony taken in either of the above-entitled causes, with the exhibits thereto placed on file, shall be considered as taken, and to be used in both causes above entitled, the intention of this stipulation being to validate and bring into both causes all the testimony contained in the printed "record on cross-bill," so far as the same is correctly printed, which has been taken on verbal stipulation and actually used on the argument of both causes this day concluded, the same having been argued and this day submitted together as one cause.

Detroit, Nov. 9th, 1872.

D. B. & H. M. DUFFIELD,
Sol'rs for Compl'ts in Case No. 1381,
and for Def'ts in Case No. 1408.

GEO. H. PENNIMAN & ALFRED RUSSEL,
Solicitors, of Counsel for Def'ts David D. & Sarah Ann, in Case 1381, *and for Com. in Case* 1408.

Endorsed: Nos. 1381 & 1408. Circuit court U. S., eastern dist. of Mich. In chancery. David D. Oliver, compl't, *vs.* Garret B. Hunt *et al*, def. Stipulation as to depositions being well taken, and to be used in both cases. Filed in open court, Nov. 9th, 1872. A. Mandell, clerk.

2854 U. S. Circuit Court. In Chancery.

DAVID D. OLIVER *vs.* GARRET B. HUNT *et al.*

The following testimony is taken by consent of both parties, by Messrs. Flowers & Nichols, stenographers and notaries public:

JULY 26TH, 1871.

DOUGAL MCARTHUR, sworn for complainant:

Examined by Mr. RUSSELL:

I reside at Alpena, Mich. I came there seven years ago.
2855 My business is that of lumbering and dock building. In June, 1867, I went to work for D. D. Oliver, upon his property at Devil river, and put in an addition to the dock there.

Q. What was your pay for putting that addition in?

Mr. DUFFIELD: Was there a written contract?

WITNESS: Yes.

Mr. DUFFIELD: I object to any testimony without producing the contract.

A. $2,000; $1,800 for that addition and $200 for extra work.

Q. What was the value of the dock and the railroad to the water mill, in the fall of 1867?

A. It was worth $6,600. I do not know the dimensions of the dock. Both the dock and the railroad at that time were in good condition. The water mill was running in 1867.

Q. Describe the works in the mill?

A. There was one upright, a circular saw, an edger, and lath mill. They were all in good order in July, '67.

Q. What was the capacity of that mill? How many feet of lumber would it saw per day, at that time?

A. I could not answer that question. To the best of my knowledge, from 20,000 to 30,000 feet per day. I am acquainted with Geo. J. Robinson and H. M. Robinson. When I first knew Geo. J. he claimed to own a share—one-third, and H. M. claimed to own all. That was H. M's statement to me.

Q. Do you know anything about this water mill being stopped after you went there?

A. Yes, sir. In the spring of 1868.

2856 Q. Will you state who stopped it?

A. H. M. Robinson. I know he did, because I was present.

Q. Who seemed to be the head man and have charge of that property at the time the mill was stopped?

A. H. M. Robinson seemed to be the leader. Whatever he would say was always carried out. That was the latter part of June, '68. I left there on the 13th of June.

Q. State what H. M. Robinson, at that time, when he was in charge and stopped the mill, said in regard to the property?

A. I heard him state that the property did not belong to D. D. Oliver or Geo. J. Robinson; that the property belonged to him, and his money paid for it. At that time I would judge the water mill and the dam together were worth about $9,000—the dam and the mill and saws, and all the machinery that belonged to it. After I finished making the addition to the dock at Ossineke I worked at different kinds of work. During the summer I was making timber for the new mill, and repairing dams and breakwaters, and one thing

another all summer, until fall. I refer to the new steam mill. It was some time in August, '67, that I got through with the docks. The next winter I lumbered.

Q. For whom did you cut and haul logs?

A. I made the contract first with Oliver.

Objected to, as the contract with Oliver has nothing to do with the defendants.

Q. What amount of logs did you get out that winter?

A. 211,543 feet for Oliver and Robinson, for which I was paid $4 per thousand; they were worth $7½ per thousand when run at the mill.

2857 Q. How many logs were got out that winter for Oliver and Robinson by all the jobbers together, if you know?

A. I know by meeting the men in the office. We met in Oliver and Robinson's office, and both of them were present when the statement was taken down. I was going to take the job for running the whole river. The figures were put in by the whole party. There were 8,000,000 of new logs, besides what lay in the river—old logs. I am speaking of the winter of '67 and '68. Somewhere over 200,000 feet of old logs were wintered over. I have not included those in the 8,000,000. At Ossineke and all around there the "stumpage" of standing timber was worth $2½ for Norway pine, and white pine from $3 to $3.50. In the spring of 1868 I made a contract to build an additional dock for Oliver and Robinson, but I did not build the dock, because they would not let me go ahead with it.

Q. Who stopped you?

A. H. M. Robinson. He said if Oliver made a contract with me to build a dock, let Oliver furnish me supplies and pay me for it. He would not pay it and have anything to do with it. I quit work, if I recollect rightly, about the 8th of June. I had cut about 486 pieces of timber for the dock on the lake shore. They took that timber away and sawed it into bill timber in the mill. There were about 300,000 of bill timber, and it would be worth $9 a thousand on the shore.

Q. Who appeared to be the proprietors of the concern in the spring of '68?

2858 A. Oliver and Robinson, at the time I was making the contract with them.

Q. Who was agent in charge?

A. Geo. B. Melville was the agent. The operators about the place received orders from Geo. B. Melville, and sometimes from H. M. Robinson. H. M. said at that time he was the real owner of the property himself; he said that more than once; he said it the last time after I quit the dock. When the dock arrangement was done I told him I ought to get my pay for the lumber I took out; put arbitrators on, I suggested, and allow me to have whatever my work was. He said no; Oliver made the contract, and I would not get a cent from it. That was between the 6th and 7th June.

Q. Were there any cedar posts got out in the winter of '67 and '68 for Oliver & Robinson?

A. There were, by a man by the name of Oliver; not the complainant. I could not exactly tell how many were got out. They were worth about seven cents. Those were extra large ones, and were worth probably 8 or 9 cents. I left there on the 13th of June, 1868.

Q. Who paid you off?

A. Nobody.

Q. When did you get your last pay?

A. I did not get any. I made application for payment to Geo. J. Robinson and H. M. Robinson.

Q. Was there anybody else in charge there at that time?

2859 A. Melville was; Mr. Oliver was not there then. I met him in Alpena a few days after, and I begged him to let me go on and finish the job, since I had gone so far with it, and I would not get anything unless I finished it. He said if he had the power to do it he would, but by and by he would come around.

Q. How long had the Robinsons been in possession at that time?

A. They came there some time in November before, and this was in June, 1868.

Q. How long had it been since Mr. Oliver left?

A. I could not tell how long; I do not know that it would be over 3 or 4 weeks.

Q. Do you know why he went away?

A. I do not.

Mr. Duffield enters an objection to any testimouy in reference to any statement made by H. M. Robinson as being irrelevant.

Cross-examination by D. B. DUFFIELD:

Q. Who paid you this $2,000 for this dock?

A. I could not say that I got that—all of it; I did get it one way; I got it in material.

Q. From whom did you get it?

A. From Oliver.

Q. Do you know whether it was charged on the books to Oliver & Robinson or Oliver?

A. Oliver and Robinson were not in existence then as partners, that I know of.

Q. You got it from Oliver?

A. Yes, sir.

Q. How do you know the value of the railroad and dock to be from six to seven thousand dollars?

2860 A. From what I considered the work was worth. I never made a careful estimate. Nobody ever told me it was worth that. Mr. Oliver never told me. Supposing he did, it would not affect me any.

Q. You think the capacity of the mill was from 20,000 to 30,000 feet per day?

A. Yes, sir. I never sealed it, but I have seen what they would saw in a day piled out in the pile, and I would consider there was some 20,000 to 30,000. It would average probably 25,000 a day.

Q. Did you ever run the mill a day?

A. No, sir. I never sawed any at all.

Q. How do you know that H. M. Robinson stopped that mill in the spring of '68?

A. Because I was present.

Q. Will you state what he did, how he stopped it.

A. My brother had taken a contract for sawing lath and pickets that summer, and I went up with him. He worked about a week along with the millwright to get the thing in shape, and he was detained. One day they would go on with it, and another day they would not go on, and I told my brother I would go up with him and we would come to a decision as to whether they would go on, and if they did not there was no use of him losing his time, he might go to Alpena where he was before. And we started up, and he asked H. M. Robinson what they intended to do with the mill, and he said they would run it.

Q. Was Geo. J. Robinson there then?

A. No, sir.

2861 Q. You said H. M. Robinson was the leading man, and what he said was carried out. Was that when Geo. J. was away, or when he was there?

A. Sometimes when he was away and sometimes when he was there. I have heard him scolding G. J. about some work that he was doing; finding fault with him.

Q. Did you ever make an estimate of the dam and mill and machinery—a careful estimate of it?

A. No, sir. I never did, any further than that I was well acquainted with it.

Q. How long since you were there?

A. I have not been there, any further than passing by, since June, 1868. I was building a State road down there a year ago this summer, and was backward and forward mostly every day.

Q. How came you to make an estimate that this was worth eight or nine thousand?

A. Because I would pay it for it if I had the money. I am referring to June, '67, not '68.

Q. How do you remember the number of feet that you say you got out for Oliver & Robinson?

A. I could remember it from the first day until now. I would for twenty years to come.

Q. Have they been furnished to you lately to refresh your recollection by anybody?

A. No, sir. I have got papers at home.

Q. Has Mr. Oliver furnished you those figures?

A. Oliver did not tell me to say anything. Supposing he had; do you suppose I was going to tell any falsehood?

2862 Q. You say you heard all the parties state the amounts of what they got out?

A. Yes.

Q. Do you know that was actually the amount they got out, or did those parties claim that? Did you ever scale the logs?

A. No, sir.

Q. You do not know from actual observation?

A. No further than I state.

Q. Did you have any dealing with the mill on the score of stumpage that year?

A. Not with that mill, or any other, that year.

Q. You spoke of Geo. B. Melville being in charge up there? Do you know what the actual relations of Mr. Melville were to the concern, or did you simply guess that he was connected with it?

A. I know that he was agent for the concern in 1868.

Q. How long? When did he begin and when end?

A. I cannot tell you when, but I know he was in June when that replevin was made. When they replevied that property away from me Melville was the man that did it. He took his papers to the court to show that he was authorized; that he was agent.

Q. How long before or after June was he agent?

A. I cannot tell.

Q. What sort of an agency?

A. I cannot tell any further than that the papers stated that H. M. Robinson and Geo. J. Robinson said he was their agent, and whatever he had done would be all right, and the would sanction it.

Q. You mean agent for Oliver & Robinson, I suppose?

2863 A. Yes, sir; I guess Oliver was somewhere around there. The other party I did not think took hold then.

Q. Did you get out these cedar posts?

A. No, sir.

Q. How do you know how many there were there?

A. I never counted them; I only judge there would be about that many, more or less.

Q. Do you know for whom they were gotten out—on whose account?

A. I do not know, any more than I have seen Mr. Oliver in the store getting supplies during the winter on the strength of the posts.

Q. Then you cannot say whether they were Robinson & Oliver's account or Oliver's that these cedar posts were actually got out on?

A. No, sir; I do not know. Only I know he got supplies from the store—that is all.

(Read from the phonographic notes to the witness and signed.)

AUGUST McARTHUR.

C. FLOWERS, *Stenographer.*

2864 JULY 26, 1871.

JOHN S. DALE sworn for complainant.

I reside in Buffalo; am a millwright and ship-carpenter; I have been accustomed to working on mill engines some; have set them and run them.

About the 6th of August, 1867, I went to put up a steam mill on Oliver's property, at Devil river. When I went there the water mill was running. It stopped as soon as we got the steam mill ready, which was in September, in the latter part. I think we started about the 23d September.

Q. Why was it stopped?

A. We took a circular saw out of the water mill, and put it into the steam, and they did not have men enough to run both at one time.

Q. How much was the water mill cutting at that time when you went there?

A. Both saws, I should judge, would cut from 20,000 to 30,000. It would depend a good deal upon its logs; large logs would run 30,000; small logs probably 20,000.

Q. Was the water mill in good order at that time, in your judgment?

A. Yes, sir; she was all repaired new; that is, the saws and edgers and lath mill; in the spring of 1868, the mill was again started.

2865 Q. Who fitted up the machinery?

A. I did.

Q. State what you did.

A. I lined up all the saws afresh; put them in order; frost, sometimes, in winter will throw them out; I went all through, except the circular, and that was taken out; I was going to put in a shingle mill there; we had it there ready.

Q. Why did you not put it in?

A. Because I was stopped from going on with it; I was told I was to get my pay from H. M. Robinson; when I was stopped we had the machinery all ready for the shingle mill; it had been sent from Saginaw to me by Mr. Oliver.

Q. How long had the water mill been running that spring?

A. Three weeks to a month; I could not say to a few days; over three weeks.

Q. Why did the water mill stop running?

A. H. M. Robinson said it did not pay; he was short-handed; the lumber was piled up after they sawed it, before it went to the edger to be edged; there were only three men in the mill, all told.

Q. How much additional expense would have been necessary to put the shingle mill going when you were stopped from going on with it?

A. Myself and partner would have put it in in about two weeks for $100 to $120.

Q. What would have been the capacity of that mill for shingles when finished?

2866 A. With the Valentine double cutter, if put up well and in good order, you can cut about 80,000 shingles a day; this machinery had been run in Detroit; I do not know how many she had cut.

Q. When did you leave and what was the condition of the mill when you left?

A. I left in December, 1868, the latter part. The mill had not been touched. The stuff was all there; even the scaffolding had not been taken down. It was there when I left. I said I could not work for two masters; one would tell me to go on and the other would tell me to stop. I said I will leave you until you get settled, and when you are settled send for me and I will come back.

Q. Was the water mill in good order for running, excepting the shingle mill?

A. Yes, sir; it was in good order. I repaired it.

Q. How many years would that mill have run without repair, in your opinion?

A. The mill might have been running now if no misfortune happened—no fire or anything; it would have run until now with same repairs.

Q. What was the mill worth at that time, in your opinion?

A. It is a pretty hard thing to put an estimate upon it. To the best of my judgment from $5,000 to $6,000; without the dam the mill was worth nothing; the dam, if it was good, would be worth between $4,000 and $5,000 for the use of the water.

Q. Do you know what has been done with the water mill since May, 1868; and, if you do, what?

A. I helped cut away some part of it—cut her flungs out
2867 to let the water away when the water was too high in the dam; took some machinery out; the edgers were taken out and the lath and picket machinery; we took the driving-wheel out.

Q. You left in May, 1868; when did you return?

A. January, 1869; I remained there until the last day of July, 1870.

Q. Will you state in what condition the mill was put and by whose orders?

A. We had to take the flungs down to let the water through the dam which was broke. The banks were bursted; we chopped out the front and back flungs, and we let one wheel run until it took fire and burned so that we could not get at it; that was the wheel that drove the edgers; the mill did not burn down, but the shaft burned and fell into the water and that put it out; I was directed to do what I did by George J. Robinson; he was there at the time; the end of the shaft was all that burned; part of the machiney was taken out and laid down, and a hog-pen made where the picket machinery stood, and some of it was sent to Alpena for old iron; that was some old castings and boxes.

Q. Do you know whether shingle wood was got out in the winter of 1868?

A. There was some got out in 1867, the first winter I was there.

Q. In the fall and winter of 1867–'8 what was the nature of your duty there?

A. Millwright—keeping the large mill in repair; we sawed all winter; I did general carpenter work; built a blacksmith shop and
a large barn.

2868 Q. What was the condition of the railroad from the water mill to the dam at that time?

A. It was good. We hauled supplies on it. It was surely half a a mile long.

Q. State the condition of the dock at that time, and whether it was put in while you were there.

A. It was put in in the summer of 1867, because they were working at it when I went there, putting an addition to the end of it.

A large crib 90x80. They have built slab docks since at the sides, but none out further into the water. They were building slab docks when I left last summer.

The capacity of the steam mill at the time I went there first was 30,000 per day. The mill was 130x40, two stories high. I think the engine cylinder is 16x20; four boilers, two flues to the boiler—20 feet by 40 inches. Two circular saws, one 72-inch and the other 60-inch. One edger, and one butting saw, and a feed mill for grinding feed, and a log "canter." These were all new and in good order. There were four boilers, similar to the others exactly, all made by Bremmer, in Detroit, that were not set; and smoke-stacks made purposely—steam drum and everything complete—fire-front and grating—everything was ready. I thought we were going on with it. I have been asked what the mill was worth by Robinson, and I have always said it was worth from $30,000 to $35,000 before we put the extra repairs on. That was in 1867-8, prior to May, 1868. In May, 1868, the railroad and dock were worth from six to seven thousand dollars, taking all the new work we put in. We put in new trestle work for about 40 rods, of 40 feet wide and 32 feet
2869 high. The building of such structures has been my business for 33 years—ship carpenter and millwright.

I was acquainted at that time with the value of pine timber standing in the vicinity of Ossineke. The stumpage—Norway—was worth $2.50; cut it clean as we go through the woods, and white pine was worth from $3.25 to $3.50. I have seen it sell for $4.00.

Q. Why is white pine worth more than Norway?

A. You can get the very clearest Norway and it will not sell for anything but common, no matter if there are no knots or shakes in it. White pine sells for uppers.

Q. What do you mean by uppers?

A. What we call "first clear" and "second clear," sometimes called "box." The first and second clear are above common.

Q. How many old logs were wintered over at Ossineke in the winter of '67 and '68?

A. Myself and the head sawyer went up; we stopped the mill a few days and went up to see if there was any long stuff, and he considered—I am not so much a judge of logs in the water as in the woods—we made out there were two millions and a quarter. They were scattered terribly. I should think logs like those were worth about $7.50. The new logs would be worth the same—$7 to $8. When I returned to Ossineke after I left there I worked for Cunningham, Robinson, Haines & Co. Geo. J. Robinson engaged me; told me that was his firm. He engaged me in December and I went there on the 10th of January. Melville was with him when he engaged me. I said I would not go back unless they had got settled in some shape. When I came back to Ossineke I went to work and altered the mill; put a large gang in it.

2870 Q. State what amount of improvements were put into the mill then?

A. I never saw the bill. I have read the agreement. I know the work, but I do not know what the machinery cost.. I put in a new

gang, changed the old engine and put a new one in her place, 20x26 cylinder. I put in another butting saw, a new patent edger, and lath mill. The labor was worth between three and four thousand dollars.

Q. Do you know anything with regard to the sale of machinery by G. B. Melville, as deputy sheriff?

All testimony as to sheriff's sale objected to.

A. I know there was a sale of machinery. The fact was it was advertised and they had a sale—Melville and Geo. Robinson, the two of them together. It was a sale of the mill and machinery. That was in the winter. I could not say the date and when the mill was running, after I went there the second time.

Q. Do you know of a concern by the name of the Ossineke Lumber Company?

A. Yes; there was a company by that name; at least our logs were all marked that way.

Q. How much lumber was sawed at Ossineke in 1869?

A. We sawed a great deal we did not ship; we shipped between six and seven millions, as near as I can judge.

Q. Who had charge of the mill from January, 1869, to February 15, 1870?

A. I did.

Q. What percentage of uppers would the logs cut during the season of 1869?

2871 A. I asked one of the firm how the lumber held out and how it was cutting—if there were many culls—and he said no, it held out pretty well. He said he thought it would average from twenty-five to thirty per cent. uppers. I think our lumber was worth about $16 per thousand that season. Geo. B. Melville was foreman and agent in 1867, '68, and '69, for Oliver & Robinson. He was foreman out in the woods and at home. There were some thousands of cedar posts got out for Oliver & Robinson in the winter of 1867–'68 that were brought to the water mill, and some way up on shore. They were got out by David Oliver, a nephew of this man, and a man by the name of Ranney. I could not tell how many were got out. I know I shipped three or four thousand away from the dock. A great many of those that were not shipped drifted out into the lake. They were worth seven to seven and a half cents each.

All testimony with regard to cedar posts got out by D. Oliver, the nephew of the complainant, objected to.

Q. In May, 1868, at the time you left there, whom did the operators take orders from and obey?

A. Geo. Robinson used to give orders generally. The old man used to come around very often. I believe we always called him the old man. He would sometimes say nobody owned a damned cent of it but him; he owned it himself, and his money paid for it.

Q. State who was the man at that time, in May, 1868, who had the lead of things and whose word was law?

A. The word of each was law—the old man stopped me at the mill.

2872 Q. I mean as far as general operations were concerned?

A. Both of them. The old man was the means of my stoping and going away, and also several others that went with me.

Cross-examination by D. B. DUFFIELD:

Q. By whom were you first employed?

A. D. D. Oliver. I stayed in his employ until November, when Robinson went in with him, and it was the firm of Oliver & Robinson until I left in May. I was then absent until the 10th of January, 1869, and then I came back and remained until the last day of July, 1870. I was millwright for the establishment and foreman part of the time. I started to work on the 12th of January, 1869, and I gave up on the 15th of February the next year.

Q. You were millwright the rest of the time?

A. I was millwright and foreman, too, then. I was foreman about thirteen months.

Q. What mill was it you were running?

A. The steam mill; when she was running I was running her. We quit on the 10th of November, I believe, that season. I think the last day sawing was on the 10th. I think we resumed running the mill in the fore part of Aprill, 1870, and then I quit on the last day of July. I left on the 3d of August.

Q. You ran it until you left?

A. No, sir; I gave it up in February.

Q. And commenced again on the 6th of April, 1870?

A. Yes, sir.

Q. What were you doing from the time the mill was shut down until you left?

2873 A. Then I was millwright when Malcome McDonald took the charge of the mill. I was carpenter in general. I had got tired of running the mill. I commenced repairing the mill again on the 24th of January. There are always repairs after the mill has been run a season. Malcome commenced working on the 12th of February. He took my place as foreman of the mill.

Q. Were you ever engaged in the lumber business on your own account, buying and selling lumber?

A. No, sir; only in small quantities, what I wanted to use. I have never been in the lumber business.

Q. In reference to the estimate you make on these mills and machinery, do you make the estimate from your own recollection, or did you make a careful estimate?

A. I have been thinking about it some. When I was there they would ask me what things would be worth. I have valued mills before for men when they have requested me to do it. I have tried to estimate the value. I have never made a careful estimate. I think, as near as I can, it was that.

Q. You believe that would be a correct estimate?

A. I do.

Q. Did you ever take a correct estimate of the yield of that steam mill in a day?

A. Yes, sir; I can show you days and days in this old book now.

Q. And of the water mill also?

A. Yes, sir; the last seven days sawing in one place. I took it down each day as I sawed in the steam mill. That is my way
2874 of doing work. I generally want to know what I am doing, and how much of it when I am working for a person. I know what she cut in the first place, and I know what she cut after we altered her.

Q. You say you know there was a company called the Ossineke Mill Company; do you know who composed that company?

A. I do not, sir; there was some change from Cunningham, Robinson, Haines & Co.; I never inquired into their business; it did not affect me any.

Q. Did you have charge of the books showing the amount of lumber that was shipped?

A. No, sir; we shipped our lumber very often by the lump—did not measure it at all on the dock.

Q. Did you ever keep a record of the shipments?

A. Yes, sir; I have a few vessels down here in my book, some 14 or 15, to see how we were going on.

Q. Was it your business to do it, or did they keep it in the office?

A. They did not ask me to do it—only I wanted to see what lumber we were getting away; I wanted to see if they were shipping any more lumber when they had a new foreman than when I was around; here are the entries of 15 vessel loads on my book.

Q. Do you know who got out these cedar posts, and what quantity they got out?

A. I do not; I know they got out a number and brought them to the mill, and we intended sawing a lot of them; some of them were put in the dam; I was fitting up the old water mill to cut them, and they stopped me.

Q. When was it that you transferred the machinery from the water mill to the steam mill?

2875 A. Part in 1867, and a part in 1869 and 1870. We were taking it out at different times; took anything that suited us, and that we wanted in the new mill; the transfers from the water mill to the other mill were made perhaps at a dozen different times; anything that we wanted and we thought necessary we took.

Q. So that the new mill absorbed the old one?

A. There was not much left; only the upright saw, and that we could not put into the new mill; we had no place for it.

Q. Was any portion of it done during the time Oliver & Robinson was there?

A. Yes, sir; the circular saw was taken out in Mr. Oliver's time, before there was any partnership, to my knowledge.

Q. How much of the water mill was transferred during the time of Oliver & Robinson's partnership?

A. What I took out was done, part of it, in 1869; we took out a

driving-wheel and some tightners belonging to the circular, and a tightner belonging to the driving-wheel also; the greater part was taken out in 1869 and a part of 1870.

Q. That was at the time of Oliver & Robinson?

A. No; there was no Oliver to it then; It was Cunningham, Robinson, Haines & Co; I was not there when the company was changed; it was changed when I was away those six months; I am now living in Buffalo, and am engaged in boat-building now; I follow both boat-building and millwrighting; I have worked 34 years at the trade; I am not particular which.

2876 Q. Whether you scaled those logs that were left over at the time you went up to look at them?

A. No, sir.

Q. Do you know whether Geo. Melville at the time of that sheriff sale was a deputy sheriff?

A. He was.

Redirect:

Q. From the time you went there in 1869 until you left in 1870, what other improvements were made by the concern in addition to putting machinery into the steam mill, which you have already mentioned?

A. We put a large crib beside the other at the end of the dock, and they have been building slab-docks, and we put one dam by the mill, and another dam away up some two or three miles. There have also been some shanties built there, and one thing and another and built Robinson's large house for him to live in.

Q. What was the object of these improvements?

A. They did not have water enough at the mill to float the logs on to the carriage was the reason we put the dam up at the mill.

Q. Can you give me a statement of the cost of those improvements which you have named?

A. I did not build the big dam. I built the one by the mill myself. It might have cost some $750. The other cost probably $1,500 It is a heavy job, badly built right in the top of the earth. There was work enough in it to make a good dam out of it.

Q. What were the improvements about the dock worth, in your opinion; what did they cost?

2877 A. That is a hard thing for a man like me to get at, in any shape. We built the slab-docks to get rid of our refuse stuff around the mill. The first summer when we run*ned* the mill they took it away on the wagons and burned it. They thought they would want some docks and they used the refuse stuff. The crib they built was worth about $450. The shanties were kitchens intended to be the rear part of some houses built in front. We never put the houses up.

Q. What was the expense of those erections?

A. From $70 to $80 each. They are not sided; they are shingled, built with culled lumber, and filled with sawdust; and then we put a house up for myself to live in worth about $150. I built another new blacksmith shop. They turned the other new one into a dwell-

ing-house; that was worth about $100. There was that house of Robinson's. That is a well put up house—put up part while I was there, and it was finished when I came back.

Q. How much is that worth?

A. I forget now what it cost for building; perhaps about five or six hundred dollars.

Q. Which Robinson was that for?

A. They both lived in it. George was married, and his father lives with him. They do not now. They were living in a boarding-house when I came away.

Q. Do you know of any other improvements made up to the time you left there?

A. There have been improvements made—repairing dams and such like, because they burst, and we have to keep them in good order, such as clearing up the river.

2878 Recross:

Q. When was all this work done?

A. In 1869.

Q. Who paid for it?

A. The company; Cunningham, Robinson & Haines. I cannot give any fair idea how much it would all amount to without I give the machinery too, altogether.

Q. Was it not a good many thousand dollars?

A. It must have been, machinery and all.

Q. Was it $50,000 or $60,000?

A. No; it was not that amount.

Re-redirect:

A. The defendants allege that they have spent all they made out of the property. What is your opinion in regard to that?

Objected to.

A. I know they did not sell lumber at no $18 per thousand; I know they got a great deal more than that, because they sold to our yard in Buffalo; I know about the business; I know it was sold at our yard at retail.

Q. Did you see it sold?

A. Part of it. My opinion is that they have not spent all they made out of the property.

(Signed) JOHN DALE.

2879 JULY 27TH, 1870.

WILLIAM F. LEACH, sworn in behalf of the complainant.

Examined by Mr. RUSSELL:

I live in Alpena; sometimes I am sorting, piling, and measuring lumber, sometimes scaling; I first went to Ossineke to work for Mr. Oliver in 1867; my business there was piling, sorting, and shipping lumber. The water mill was then running; it would run up twenty-five or thirty thousand per day; the lumber was measured.

when it was shoved on the vessel, right off the dock; inspected there.

Q. How much lumber was sawed that season of 1867 at the whole establishment at Devil river?

A. About fifteen hundred thousand at the water mill; I can't say how much at the steam mill; there was, besides, in the neighborhood of sixteen or seventeen hundred thousands of laths and some pickets; I couldn't tell how many pickets. At the end of that season the water mill was in good condition, good running order; the cars were in good condition. At that time a million feet of lumber could be piled on the dock. At the close of 1867 the dock and railroad were worth about seven or eight thousand dollars.

2880 Q. Are you familiar with the building and value of that sort of structure?

A. Yes, sir; I work at it. In the fall of 1867 I was scaling logs at Ossineke for Oliver & Robinson at the shanty of Ellsworth & Price. I scaled about nineteen hundred and forty-six or sixty-six thousand feet. I can't tell for certain which, having lost my memorandum.

Q. Where were those logs drawn?

A. About fourteen hundred thousand of them drawn down to the mill and sawed that winter—the steam mill. About two hundred and forty-six thousand of the balance were put into the roll-way in the creek, and the rest were skidded in the woods and measured. About eight million of logs were got out in the winter of 1867–'8 at Ossineke by all the jobbers connected with the concern.

Q. How many old logs that winter over?

A. About two millions. The old logs were worth in the spring of '68 about eight dollars. The logs got out that winter were worth about nine dollars a thousand. I was at Ossineke during the spring, summer, and fall of '68. I was then assorting, piling, and attending to the shipping of lumber. The new mill was run during the whole season through, and the water mill was started and run in the neighborhood of about three weeks.

Q. Why was it stopped?

A. Mr. H. M. Robinson, the old gentleman, said he would not allow it to run another clip.

Q. Why did he stop it?

Mr. DUFFIELD: I object to any testimony as to H. M. Robinson, what he said or did, as irrelevant.

2881 A. He was in charge at that time apparently. He was the head man of the concern. He seemed to be the man having authority.

Q. What was H. M. Robinson doing there?

A. He said he owned an interest in the concern.

Q. Who appeared to have authority as the master of the establishment?

A. Oliver & Robinson.

Q. What was Henry Robinson doing there?

A. He was bossing some of the time.

Objected to.

Q. When he was bossing what did he say in regard to why the mill was stopped?

Objected to.

A. He said it was his money that bought the interest in that concern, and if it was not managed right to suit him he calculated to manage it himself.

Q. When he was bossing there what did he say as to his reason for stopping the mill?

A. He said he would not allow it to run or have it run any more. Oliver was not at Ossineke when the mill was stopped. The water mill was then in good order while it was running. Lumber could be manufactured more cheaply at the water mill than at the steam mill; the difference would be somewhere in the neighborhood of seventy-five cents. John Dale was repairing the water mill in the spring of '68. He was fitting up a place in it to set up a shingle mill, and repairing the circular carriage a little. H. M. Rob-
2882 inson forbid the shingle mill to be put in; would not allow it run. He said any man that worked on it or did a day's work he would not pay him a cent, and, of course, the thing was abandoned.

Q. Whom did the operatives obey after that?

A. H. M. Robinson, while he was in command there, or in charge of the thing in the absence of the rest of them. He remained in charge by spells as long as I worked there, and I left in '69. He took command in the spring of '68, about the time they went to first shipping lumber, and remained until I left, about the 8th or 10th of May, 1869. Some operatives declined to obey H. M. Robinson.

Q. What became of them?

A. Sacked them off, let them go; wouldn't pay them either. The steam mill was in good order in the spring of '68. Its capacity was two circulars, butting saw, and edging table. It would cut from twenty-five to forty thousand a day. It was worth in the summer of '68 thirty-five thousand dollars ($35,000). The season of '68 about eight millions of lumber was sawed and about seven million feet shipped. The lumber was worth that season as it ran from the saw about thirteen dollars. I had a conversation with G. J. Robinson in regard to the lumber and the business there. I had conversations with him a good many different times in '68, none in '67 at all.

Q. State what he said in '68 in regard to the lumber and the business there, giving the time and place, as near as you can.

A. He came on the dock one day in '68.

2883 Q. What month in '68?

A. In May, June, July, August, September up to the month of December.

Q. State any one of the conversations.

Mr. DUFFIELD: I object, unless the particular time and place of conversation are given.

A. We had just shipped a load of lumber, and Mr. Robinson came

down on the dock. He got to talking about the lumber. I spoke to him, asked him how that joist and scantling sold, and so on. He said it sold for better than he expected. He said they would make a great deal more out of that concern that season than they expected, than any man had any idea of. He told me that a dozen different times, and may be more during the season of '68. I was right there on the dock the whole time. I was at Ossineke at the time Henry S. Cunningham came there in '68. It was about from the first to the fifth of September. I saw Cunningham and Geo. J. Robinson talking together several times. I saw property delivered by Oliver to Cunningham. It was on the dock at Ossineke that the delivery was made of lumber on the dock at the time by D. D. Oliver to Cunningham.

Q. How much was there on the dock at that time?

A. That is the thing I have lost my memorandum of. It was given in the spring in that other testimony, and that is correct. I had a memorandum at the time. I made affidavit in the spring as to the amount.

(The affidavit of the witness, made in the spring, is handed to him that he may refresh his recollection.)

2884 WITNESS: There was at that time two million feet on the dock, with what was in rafts lying right alongside the dock. It is all the same. Besides Mr. Oliver, Mr. Cunningham, and myself George Melville, George Robinson, H. M. Robinson, and, I think, the woman that kept the house were there. It was in the afternoon. I think it was on the 5th day of September, 1868. I am pretty sure it was. There was a vessel came in to load on that day, and went out on the ninth or tenth; went out on Tuesday. That is the reason I know, for I measured the load. The vessel was there over Sunday. That is what delayed us a day longer. After that George Hawkins acted as Cunningham's agent in charge of the property. He was from York State, I think.

Q. When Hawkins was in charge of the property what did he tell you his capacity was?

Mr. DUFFIELD: I object to any testimony as to what Hawkins said.

Q. When he was in charge of the property as Cunningham's agent what did he tell you?

Mr. DUFFIELD: I object. It is not yet proven that he was Cunningham's agent.

A. He told me he came there to take charge of Cunningham's interest in the concern. G. J. Robinson told me Hawkins had come there to be the new foreman and to represent Cunningham's interest.

Mr. Duffield objects to anything George Robinson said.

Q. What did H. M. Robinson tell you Hawkins was there for?

Objected to.

2885 A. He told me he came there to take charge of the concern, and as agent for Cunningham.

Q. About how long did Hawkins act as Cunningham's agent?

A. He was up on the river, to my knowledge, in the neighborhood of four or five days; somewhere about that time; three or four days anyhow, to my knowledge.

Q. Did you ever hear the Robinsons, or either of them, make any threats concerning Mr. Oliver?

Objected to as irrelevant.

A. I did. It was in the store one evening in '68. No; I am mistaken; it was in '69, in the spring. He said if Oliver got hold of those papers and kept them, and didn't give them up to them, it would be a big loss to them, and he would take his life. He told that to his son George, and took his revolver out of his pocket and showed it to his son. I didn't stand over three feet from him. Oliver was not present. He had just left the store with a few papers. He had just gone over to the house where he lived.

Q. Did you ever hear George J. Robinson, in the spring, say anything in regard to getting Oliver out of the concern? And, if so, state what the plan was, as he stated it.

A. He told me they were going to have a new company; that Melville was going to have a quarter interest and Hawkins was going to have another quarter interest in the concern; that they had got Oliver out. He didn't say anything about the other half.

Q. What did George J. Robinson say or do about getting Oliver out?

2886 A. He said he would not have him there; he was going to have those other men in.

Q. Did he state the means or method by which he expected to get him out?

A. He didn't state openly to me, no more than that the concern would be under a new firm; in '68, at Ossineke, Norway and white pine mixed, the stumpage was worth two dollars and a half; white pine clear was worth three dollars.

Q. How many logs were got out at Ossineke during the winter of '68 and '69?

A. Somewhere in the neighborhood of seven million; those logs were worth about nine dollars ($9) per thousand feet; stumpage was worth about four dollars in the winter of '68 and '69; about that time (the winter of '68 and '69) the property went under the name of Cunningham, Robinson & Haines.

Q. Did they saw the logs economically and in a saving manner?

Objected to as leading.

A. No, sir; they did not; they were very extravagant in slabbing them; they took off some very large slabs—wasted the lumber ridiculously; in the woods that winter they just took the largest sized; wasted the timber a great deal; they selected all the best quality of white pine; cut it very wastefully; took nothing but first-class out of the woods; they did take some Norway, but not a great

deal of it; they didn't put in as much Norway that season as they did other seasons; it was the first quality of white pine they wanted to get.

2887 Cross-examined by Mr. DUFFIELD:

I am forty-three years old. I was at Ossineke, lacking a few days of two years; I went there to work on the 9th day of June,' 67, and remained there until the 10th of May, '69; during that time I was not absent any more than I was up to Alpena and right back; I would go up sometimes on Saturday evening and come back Sunday evening; when I first began to work there I worked by the job, sorting and piling at the water mill and shipping it; I was in that business somewhere along in the neighborhood of about five months, maybe a little over; the next thing I did I worked about two months in the new mill tail-sawing on the big circular; it might have been a few days over two months; I think I worked out of doors then until sleighing commenced; I don't know exactly how long, and then I went into the woods and went to scaling; it was either in December, '67, or January, '68, that I went into the woods; I don't know exactly how long I was in the woods; it was somewhere in the neighborhood of four months; pretty near that; I was there a long while after the sleighing left; I did nothing there but scale, except helping to load, the same as any scaler; no person scaled in that shanty besides myself; it was the shanty of Ellsworth & Price; I scaled nineteen hundred and forty-six, or else nineteen hundred and sixty-six thousand, one of the two; I know I scaled that amount, because I put a rule to it and figured it up; I had a memorandum of it at the time; I saw the memorandum that I had in my book somewhere in the neighborhood of a year ago.

Q. Do you speak from memory as to this amount?

2888 A. From memory and what I know to be so that I scaled that amount. Mr. Oliver has asked me how many I scaled in the woods, and I have told him. He did not tell me how many I had scaled. In 1867 I tallied one day at the water mill somewhere in the neighborhood of twenty-nine thousand, a few feet over. I never built a mill; never contracted to have one built; am not a millwright; my trade is piling and assorting lumber, and I work at building docks. I can turn my hand at most anything. In regard to the worth of that railroad at the mill I just made the figures by what my judgment would allow me, estimating what the lumber was worth and what it would cost to get it out, etc. I don't exactly know how many feet of railroad there is, nor how many pounds of iron. I don't know exactly how many feet in length there is of dock, but in width the main part is somewhere about seventy feet. I don't know how far the seventy feet in width runs, but it is not the whole length. I don't know how many piles are in the dock nor how many feet of flooring. I worked for Oliver somewhere in the neghborhood of five months on that job; then I worked for Oliver & Robinson; then for the company that is now there. I left because I didn't feel disposed to work any more. Don't know that I was dismissed; be-

lieve I left of my own accord; had no difficulty. I never made any contract for their lumber or for the sale of any of their logs.

Q. Was it, in your judgment, advantageous to run the water mill after the steam mill quit working?

A. I did think it was profitable to run it.

2889 Q. Ever make a careful estimate as to the value of that mill in all its details?

A. Yes, sir; I took it the way it stood. I didn't make any figures; just estimated it in my own head what it was worth. If I hadn't I wouldn't take that for it. I took the mill and the site for the mill there and the dam together. I think it was cheap enough at that. I know that H. M. Robinson was bossing, because he bossed me. I don't think he was authorized to do it any more than he authorized himself, so far as I could form any idea of it. I have seen him boss when his own son was there, too. I think the water mill would manufacture cheaper than the steam mill at that time, because the expense of running it was not so much. I have seen an estimate of the cost of the two. I figured it up myself, and I have seen other men figure it up that were working in the mill. Mr. Dufour was one of them.

Q. Was H. M. Robinson exclusive boss there over everybody?

A. He was when he had a mind to be a boss. He claimed to be boss when he took his fits on him to be boss. He said it was his money and he calculated to be boss to suit himself.

Q. Can you state the exact words that occurred between you and George Robinson in this conversation you have testified to in reference to the amount of lumber that was sold, the value of it, in regard to what they were making?

A. He said they were doing far better than anybody had

2890 any idea of; that they were making money. That was in 1868. I can't tell the exact time. Is was through the summer or fall. I know it was while I was on the dock. I was there the whole season through. When that delivery took place on the dock I knew that Oliver was making the delivery to Cunningham. I was not called in as a witness. I heard the conversation pass between the two when they came down on the dock. He said to Mr. Cunningham: "We have looked the thing all over; here is the lumber; you can see just what there is and take it." I couldn't tell you what Cunningham said. The two million feet that were on the dock and in rafts at the time of this delivery had not been sealed. We just estimated it. I scaled part of it afterwards. At that time Melville took the rule and measured one course in the pile, and made an estimate of that one course, and then counted the courses in the pile, and then figured it up. Hawkins told me he came to take charge of Cunningham's interest. I can't say how long he remained there, any more than I said before. I said two, or three, or four, or five days—somewhere in that neighborhood.

Q. Did he come in and take possession of the books—anything of that kind?

A. Not that I know of. I couldn't say whether he did or not. I never had a contract for stumpage in getting out logs. I have

worked at it. I never had any contract for putting in logs. I saw the books that the scalers used in the woods in the winter. Those
2891 are the books the clerk showed me—the tally-books they used in the woods in the winter. I never footed up the aggregate. The clerk had figured them all up and showed me the figures. Reuben Gallup was the clerk. The scalers swore to the amount they scaled. They swore me in the spring when I delivered up my book, when I got through scaling. The clerk told me it amounted to eight million. I could see that their books and mine amounted to about eight million. It was in '68 that the wasteful cutting of lumber to which I have referred took place. It then went under the name of Oliver & Robinson. It was not all under their name. The wasteful cutting in the woods was done in the winter of '68 and '69. I didn't work in the woods at the shanty in '68 and '69. I was helping build a dam and getting out timber for a dock and spiles. Since last fall I have been working for F. N. Barlow, at Alpena. I live there now. I didn't scale any logs in the winter of '68 and '69.

Q. How do you know the amount that was shipped the season of '68?

A. I inspected myself over five millions of it, and Kline, of Detroit, inspector, inspected about a cargo and a half himself, and George Melville the balance, which foot over seven million. I have traveled from Alpena to come here. I believe it to be two hundred and forty-eight (248) miles the way I came. I have been in attendance three days.

(Signed) WILLIAM F. LEECH.

2892 JULY 29.

JAS. H. REED, sworn for complainant.

I live in Alpena, and have lived there one year last spring. Previous to that I lived at Ossineke, at which place I went in '65, and remained four years. I left in the middle of January, 1869. During the whole of the time I was there I was employed upon the Oliver Devil river property. I was scaling there in the winter and running a circular saw in the summer. I ran a lath mill when I first went there. In the winter of '67 and '67 I scaled 2,300,000 feet of logs. There were logs got out beside what I scaled. I could not say how many. They were hauling ten or twelve days with four teams. In the summer of '67 the water mill was running at Ossineke. The machinery in the water mill consisted of a circular, upright butting saw, edger, and lath mill. It would cut from 12,000 to 17,000 per day, and about 8,000 of lath. I worked in the mill. It was in good order. In my judgment at that time that mill was worth about seven or eight thousand dollars. In the fall of '67 the railroad track from the water mill to the dock was in a good condition, as was the dock itself. Part of it was built that season. In my opinion the railroad track and dock were worth about $6,000.

Q. Will you describe what buildings were on this property in the latter part of 1867?

2893 A. There were five dwelling-houses, carpenter shop, and a blacksmith shop, three barns, and a warehouse and store.

Q. Was the store a separate building from the buildings you have mentioned?

A. Yes, sir. What I have enumerated is additional to the two mills. In the winter of '67 and '68 I was employed on work in the steam saw-mill. She ran until March—all winter. There was one saw running night and day. We had two gangs of men. We cut about 26,000 per day. In the summer of '68 I still continued in the steam mill. We ran two circulars, and were cutting about 50,000 feet per day. One saw ran 24 hours and the other twelve. The mill at that time was in a good condition for running. I consider the value of the steam mill in 1868, in the summer, to have been about $30,000.

Q. Were you in Ossineke at the time Henry S. Cunningham came there in 1868?

A. I was.

Q. Were you called to witness any papers when he came there?

A. Yes, sir. I know what the papers were. They were deeds from Oliver to Cunningham. This was about the first of September, '68; I cannot fix the date. I do not remember who came and called me to witness. It was at Oliver's house.

Q. State whether any person was appointed agent by Mr. Cunningham; and, if so, who, and whether you were present?

A. G. W. Hawkins. I was present.

Q. Who was called to witness the appointment, if any person, of Hawkins as agent by Cunningham?

2894 A. R. E. Gallup and myself.

Q. State what Cunningham said on that occasion.

A. He says I have purchased Oliver's property and interest in this copartnership, and I put Hawkins here in my stead to run the property until I get back.

Q. Who were present besides yourself and Cunningham?

A. R. E. Gallup, Mr. Oliver, G. W. Hawkins, and Samuel Ellsworth, and Oliver's wife.

Q. Where was this appointment of Hawkins made?

A. In Oliver's house.

Q. How many million feet of logs did the firm of Oliver & Robinson get out in the winter of 1867 and '68?

A. About six or seven million. They were worth about $9 per thousand.

Q. At the time of the conveyance of Oliver to Cunningham was there any lumber on the dock, and what amount, in your opinion?

A. Between one and two million. Cunningham remained at Ossineke five or six days. I was not called to witness papers between Cunningham and Oliver more than once. I believe the actual date of my witnessing the papers was the 3d of September. I am not positive.

Q. State whether, when Cunningham appointed Hawkins as his agent, he said anything in regard to the time that he, Cunningham, was going to run the property?

A. He said he was going to run that property until the debts were paid.

Q. State whether H. M. Robinson came to Ossineke in 1868.

2895 A. He was there. He came in May. He came there with money to pay some of the men. He told them if they were to work for him he wanted them to do as he told them; and if they worked for Oliver, he wanted them to look to Oliver for pay.

Q. Who took charge of the property when Robinson came there in 1868; who was at the head of affairs?

A. His son, I believe, and himself.

Q. State what H. M. Robinson said after he took charge in regard to Oliver.

Objected to any statement of H. M. Robinson as incompetent.

A. He said Oliver did not own anything there—anything that he had in the house. He could go and take his watch in his pocket, and if he wanted his bedstead or bed he could go and take it.

Q. Do you know whether after H. M. Robinson came there any shingles or shingle-wood or logs belonging to the concern went out into the lake?

A. No, sir. I cannot tell exactly the amount, but there must have been two or three hundred thousand, worth about $6 per M.

Q. By whose fault did they go out?

A. George Robinson ordered them out of the boom. He ordered the men to let them drift. This was in the summer of 1868.

Q. Do you know what he let them out for?

A. No. Not unless they had no way of working them up. There was a shingle mill there, but it was not put up, and they could not work it up without the mill. I do not know why the shingle mill was not put up.

2896 Cross-examination by D. B. DUFFIELD:

I ceased to be at Ossineke in 1869. I left there because I had hired out to go into the woods for Mr. Oliver. I am now in his employ. I was not dismissed from there by anybody.

Q. When you say you scaled 2,300,000 feet of logs in the winter of 1866 and '67, from what do you make that estimate. From memory or figures, or reference by Mr. Oliver, or what?

A. No, sir; by the book I kept. I recollect the number of feet I handed in. I have not seen the book since I delivered it to them in the spring of 1867.

Q. Do you recollect the figures from that date?

A. Yes, sir; those figures have not been furnished to me by anybody.

Q. How do you know that mill cut 7,000 feet a day, and from 5,000 to 8,000 lath?

A. One reason is I worked in it. I have tallied it, and I have known it to do that much.

Q. How do you estimate the property at $7,000. Did you ever make a careful estimate of the property as it stood, looking it over in detail, and reach that conclusion?

A. No; I have worked there. I can estimate from the work that is done. I call it seven thousand dollars to the best of my judgment.

Q. You made no detail or estimate of it in its parts?

A. I heard others say; that is all. I never made a detailed estimate of it.

Q. Did you ever make a detailed estimate of the value of the steam mill?

A. No, sir.

2897 Q. How do you know it is worth the amount you put upon it; did you hear others estimate it?

A. I heard very nearly what the machinery cost, and what the job was let for putting it up.

Q. Is that the way you get at the value of it?

A. Yes, sir; partly.

I guess the railroad is nearly 60 rods long. There was not much iron in it. The track was made out of hard wood. I do not know the cost of the whole of it of my own knowledge. I do not know how much the dock cost. I know what they paid one man for putting on an addition—something over $2,000. I never made an estimate of the cost of the whole.

Q. How many days did the steam mill cut 50,000 a day while you were there, and how many days was she idle in the summer of 1868?

A. She was not idle a great many days. I do not know that she was any. She may have been one day. They generally blow off one day and fix up a little. I do not think she varied a great deal through the summer; she may not have run as much some days, and some days she may have cut more. I have never measured any day's yield, but I have worked right along, and have seen the foreman generally measure, and he would tell us very nearly what we were doing.

Q. How do you know that those were deeds that you witnessed?

A. Mr. Cunningham read them.

Q. What was it about; do you know?

A. About the Devil river property.

Q. What did the deed purport to be?

A. Oliver's interest in that.

2898 Conveyed Oliver's property and interest in that property, do you mean?

A. Yes, sir. I do not assume to fix the exact date; I think it was the 3d of September.

Q. How do you know there was that amount of lumber you speak of on the dock at the time of the delivery; did you measure it?

A. No, sir; but I was around there. I know there was quite a lot of lumber there, any way.

Q. Have you gone over with Mr. Oliver these various facts about which you have testified before being examined to-day or yesterday?

A. He asked me if I recollected. I told him I recollected some, and told him what I did recollect.

Q. You went over this whole field of inquiry with him before you came here as a witness?

A. Yes, sir. I have never dealt in lumber selling and purchasing it; my business is running a circular saw; I have been at it three seasons, where I have taken the whole charge of the thing. I was one summer in learning.

Q. What sort of logs were those that Robinson set adrift?

A. They were got out for shingle; they were in the log.

Redirect:

Q. What company was running the Devil river property when you left in Jan., '69, at the time you quit working there?

A. That is a pretty hard thing to get at, I guess. Cunning-
2899 ham, Robinson, Haines & Ranney, I believe. I came from Alpena on purpose to attend this examination. I arrived here yesterday afternoon, and am going directly home to-morrow morning. I am employed at $4.00 per day, and left work to come here.

(Signed) J. H. REED.

AUGUST 9, 1871.

FRANK H. DYER, sworn for complainant:

I live in Alpena; have lived there 12 years; am 35 years old. My present occupation is land-hunting, at which business I have been engaged about five years. Before that I worked in the lumber works—loaded vessels with lumber, etc., as a laborer. I have been in business connected with lumber ever since I have been at Alpena. I am acquainted with the Devil river property, and have been more or less for 10 years. I have been over a large part of the lands belonging to that property for the purpose of examining them. A part of this land I have examined for Mr. Oliver, and some of those lands I have seen while examining lands for other parties; that is, lands adjoining those and intermixed with those. My object in
2900 making the examination of those lands the last two times I saw them was to see in what shape the lumber had been cut by the company holding the Devil river property, and also to look after trespass, surveying out lands, and measuring out timber cut on other parties' lands on Mr. Oaks' lands. The examination I made did not enable me to estimate the value of the lands per acre; it enabled [me] merely to estimate the amount of standing timber per acre. I do not wish to be understood to state that I can tell within a half million. I was last over these lands in July, 1871, last month.

Q. What descriptions of lands have you been over, and about how many acres?

A. First and last 15,600 acres, more or less, according to the survey.

The descriptions are as follows:

In Town. 29 North, Range 8 East.

S. E. of the S. E. and the N. W. of the S. E. of section 3.

S. E. of the N. W, of section 4.

S. E. of the S. E. and S. W. of the N. E. and the west half of the S. E. and the west half of section 5.

East half and N. W. quarter and the S. W. of the S. W. of section 6.

N. W. of the N. W. and the N. E. quarter and the north half of the S. E. and the S. E. of the S. E. of section 7.

The whole of section 8.

The west half of the N. W. and the west half of the S. W. of section 9.

The north half and the N. W. of the S. W. and the east half of the S. E. and the S. W. of the S. E. of section 10.

The west half of west half of section 14.

The east half and S. W. quarter and south half and N. W. quarter of section 15.

2901 The whole of section 17.

The north half and the northeast of the S. W. and the S. E. quarter of section 19.

The whole of section 20.

The whole of section 21.

The north half and the south half of the south half, and the N. W. of the S. W. and the N. E. of the S. E. of section 22.

The west half and the N. W. of the S. W. quarter and the east half of the east half of section 23.

The west half of the N. W. and the S. W. of the S. W. of section 25.

The south half and the east half of the N. E. and the S. W. of the N. E. and the N. W. quarter of section 26.

The whole of 27.

The east half and the N. W. quarter and the south half of the S. W. quarter of section 28.

The N. E. of the N. E. of section 30.

The south half of the S. E. of section 31.

The N. E. quarter and the south half of the S. E. and the N. W. of the S. E. and the south half of the S. W. of section 32.

The west half of the N. E. and the S. E. quarter of section 33.

The east half and the west half of the S. W. and the S. E. of the S. W. of section 34.

The north half and the south half of the S. W. of section 35.

The west half of the N. W. and the south half of the S. W., and the N. E. of the S. W. and the west half of the S. E. and the N. E. of the S. E. of section 36.

Number of acres 11,160 in that town.

2902 Town. 28 north, range 8 east.

West half of the S. W. of section 1.

South half of section 2.

The southeast quarter and the west half of the N. W. of section 3.

The whole of section 4.

South half and the north of the N. E. and the S. W. of the N. E. and the north half of the N. W. and S. W. of the N. E. of section 5.

The east half of section 6.
The east half of the N. E. and N. W. of the N. E. of section 7.
The east half and the north half of the N. W. of section 8.
The west half and the N. E. quarter and the N. W. of the S. E. of section 9.
The whole of section 10.
The north half and the north half of the S. E. half and the S. W. of the S. W. and the S. E. of the S. E. of section 11.
The S. W. of the S. W. of section 12.
Number of acres, 4,440.

Q. From your examination of the lands by referring to the map can you tell about what proportion of the whole number of acres has been cut over?

A. I should think about 5,000 acres—one-third of the whole of that part. This is not all of the Devil river property. There is some more besides these. I should think, taking it in that county, the county Devil river is in, there are about 4,000 acres more belonging to the Devil river property, beside the 15,600 acres I have described.

2903 Q. State in what manner the timber has been cut upon those 5,000 acres.

A. On sections 22, 23, 26, 27, and 34 it is badly cut. It is cut rather wastefully, and a good deal of the timber left. The best timber picked out—not cut clean.

Q. About what proportion of those sections is left and what proportion taken away?

A. I should think three-fifths was taken away.

Q. In what way has the timber been cut upon the remainder of the lands which you examined?

A. That was cut as well as it is ordinarily cut. If the lumber had been cut clean I should judge the stumpage to be worth $3 per M for white pine and $2.50 for Norway. In the way in which it is cut I should think the lumber that was left would be worth $1 more per M than what was taken away. I should judge that there was from seventy to seventy-five millions of pine timber left upon the 15,600 acres.

Q. What, in your opinion, is that worth per thousand?

A. That is a pretty hard question to answer, for this reason: Some of it is quite a distance from the water, and that would make it worth less. A man could not get so much for it as he could if it was nearer. That class of timber is worth $3 a thousand for white pine and $2.50 for Norway. I should think that would be a fair price. What I judge from is the rates at which lumber is selling up there. I wish to qualify that a little. The lumber that is on the land, that has not been cut, you understand, I should

2904 think about half is Norway. The land, in my opinion, after the timber is moved, would not be worth ten shillings an acre. I hardly feel qualified to set a price on that land now. There is a good deal of it that would not be worth paying the taxes on. Some

of it is good farming land. The descriptions I have given do not include the lands upon which the mills stand.

Q. Can you state what improvements are upon these lands included in the Devil river property which are not pine lands?

A. They made some slab-docks, and built some dams. I am referring to the improvements made by Cunningham, Robinson, Haines & Co.

Q. Describe the improvements as they exist.

A. A steam mill, two engines and a number of saws. I do not know how many. I know there is a gang in it. There are a good many houses on the property. I do not know the exact number—one good large boarding-house—a nice building. I am not able to state what the lands which are not pine lands upon the Devil river property, together with the improvements, are now worth.

Q. State whether you know what are commonly called the outside lands, connected with the Devil river property.

A. What I mean by the outside lands, are lands up Alpena county, on the west of Thunder Bay river, or tributaries. I do not know how many of them belong to that property.

Q. Will you look at the descriptions in the list, which are marked with a pencil check, and state which of these lands you know?

2905 A. These lands I have been over and I suppose them to belong to the Devil river property, but I do not know.

Q. Do you know that they are lumbered in connection with the Devil river property?

A. They are not lumbered. The following descriptions I am acquainted with:

The east half of the S. W. quarter, section 9, 30 north, range 8 east.

The N. E. quarter of section 21.

The N. W. fractional quarter of the N. W. fractional quarter of section 22.

There are some more here, but I would not feel qualified to say what they are without I looked at a map. Those which I have named are pine lands, pretty good pine—white pine and Norway, worth probably, right through, lying where it does, $2.75 per M. Those descriptions I have just read I would suppose to be worth $6.00 per acre.

(The witness being shown a map, says:) I will now read the descriptions of lands included in the Devil river property, not included in the 15,600 acres which I have described.

The N. W. fractional of the N. W. fractional quarter of section 2, town 29 N. range 8 E.; north fractional half of the S. W. fractional quarter of section 2.

N. W. quarter of section 11.

N. E. of the S. W. 11.

All of section 12.

East half of the N. E. of 13.

North half of the N. W. of 13.

North half of the S. W. of 13.

North half of the N. E. of 14.

2906 There is more in the town. east of this, of which I do not know the descriptions.

Cross-examination by D. B. DUFFIELD:

Q. How many lands have you looked over since you have been in the business?

A. I cannot tell, but probably from three to four hundred thousand acres.

Q. How did you look over these lands after you found them?

A. Some of them we find a corner section or quarter post, and follow section lines, north and south, east and west, to other corners and section posts; I cannot tell you exactly the lines we went, because I do not always follow a section line, but go around through the timber to other corners.

Q. Did you cross over the sections anywhere else?

A. Yes; I went through the section from one corner, and diagonally to another corner.

Q. When you went across sections diagonally, did you run along the section lines also?

A. No, sir; in some of them I have started and gone west in the lands, say, a mile and a half, and then south a half mile, and southeast a half mile, and south 80 rods, and back east a mile and a quarter, and then north a mile, and in that way around through it.

Q. At whose request did you look over these lands to see how they were cut?

A. At Mr. Oliver's.

Q. Who paid you for it?

A. I look to Mr. Oliver for pay.

2907 Q. When did you do this; in July?

A. Yes, sir; understand me, this particular work that he employed me to do I did in July, but I have been through that land at other times, both in 1870 and '71, but not at his request, nor any one else's in particular; I have been hunting lands around in that vicinity.

Q. Your testimony upon the way in which the timber is cut is based upon your last examination?

A. Yes, sir; and I examined it more particularly the last time to see how the timber was cut than I did to see what timber was on the land.

Q. State, as near as you can, what Oliver said to you about those lands; what you were to do.

A. He wished that I should examine and see how those lands were cut; whether they were cut economically or not; that is, whether they cut the timber as a man would generally cut his pine timber; cut it savingly; not waste it; and he wanted me to see what the difference would be in the value of the timber that was taken off, and what was left on the lands that were cut, and get a general idea of the rest of them, but not a careful estimate; if I recollect right that is what he told me, as near as I can remember.

Q. How long were you making this search for Oliver?

A. I was fourteen days in the first descriptions I have given you

Q. Did you go all over those 15,600 acres in July to see how they were cut?

A. No, sir; I was not on all that land in July.

Q. Have you given us a list of the lands that are cut that you went over?

2908 A. Yes, sir. I have given you a list of lands that were cut wastefully, in my judgment; but did not give you a list of all the lands that were cut. There are other lands that were cut well, in my opinion; so I did not make any mention of them.

Q. When you say these certain sections are so wastefully cut, do you mean the entire section?

A. No, sir. What land is cut on the section. I did not run the lines to see how much was cut; but most of those sections are cut all over.

Q. Can you tell us from that map how much of those sections are cut over?

A. 22 is cut all over. There are pieces 40 rods wide and 80 rods long that have not had a tree cut on. 23 is cut all over, also. The west half of 26 is cut all ovor. The east half of 26 is not cut all over; and I cannot say exactly what part is cut over. Section 27 is cut all over.

In section 34, the N. E. quarter is cut all over. The S. W. quarter, I think, is not all cut over.

Q. You do not know, of your own knowledge, who cut the timber on the lands that you looked over, to see how they were cut?

A. No, sir.

Redirect:

Q. Have you any reason to believe who cut and took away the timber from the land which you examined?

Objected to.

A. Yes. I have reason; because this company at Devil
2909 river lumbered in that part of the country. That is where they got their logs. I did not see them when they were cutting the timber; but the logs were in the river, coming down the river at that place; and the logs were cut on that land; and I measured the timber cut on some lands intermixed with that, and marked it cut by that company, and understood it was cut by that company.

Q. You mean you picked out some timber and marked it yourself as cut by that company?

A. Yes, sir.

Q. What mark did you put on?

A. I marked it in my book as oak timber, cut by the Devil River Company.

Q. What company do you refer to, when you say the Devil River Company.

A. I refer to Robinson, Haines & Cunningham. I do not know exactly the firm name.

Recross:

Q. You marked that oaks' lumber, because some one told you that Robinson had cut it?

A. Yes, sir.

Y. By Mr. RUSSEL: You mean where they got over the section lines?

A. Yes, sir; and some where they went over the subdivision lines.

Q. By Mr. DUFFIELD: You do not know they went over at all?

A. I know it as well as we know anything. We are just as sure as we can be, and not know it to a dead certainty.

2910 Q. You only know it from what people told you?

A. Yes, sir.

Q. Did you ever see Robinson's men lumbering in that vicinity?

A. No, sir; I have seen them cutting the lumber roads in through that land; that was in 1870.

Q. What section were those roads on?

A. I did not look at that time to see what particular section they were on, but I can tell you within 80 rods. They were cutting the roads through the south half of section 27, town. 29 north, range 8 east. I do not know these were Robinson's men, except from hearsay. I could not swear they were Robinson's men. I would not swear that the firm of Robinson & Co. ever cut any lumber in section 27. I came from Alpena. I do not know the distance. I left Monday, August 7th. I reached here yesterday, the 8th. I will leave to-morrow, the 10th.

(Signed) F. H. DYER.

2911 AUGUST 10, 1871.

DANIEL CARTER sworn for complainant:

I live in Alpena, and have lived there fourteen years this fall. My business has principally been in the woods, traveling, locating pine lands, and looking them over for other folks. I am 56 years of age. I have been acquainted with the Devil river property about fourteen years. In the fall of 1868 I was employed on that property by old Mr. Robinson to estimate the timber upon it.

Object to any testimony as to employment by Robinson.

I was in town. 28 north, range 8 east, on sections 4, 6, 9, and 10, and some on section 3. This was in October, 1868. The mill was being run at that time by the Robinsons.

Q. Anybody in connection with them, to your knowledge?

A. They used to say so, but I cannot swear to it.

Q. Who went with you to estimate the timber?

A. Mr. Melville and a man by the name of Robert Robinson and a man named Price. My instructions then were to estimate the timber on such sections, and run lumber roads, pick out places for camps among the best timber that I could find.

Q. State whether you have been over those lands since.

A. Yes, sir.

2912 Q. Any additional lands, or merely the descriptions which you have named?

A. Additional; in the latter part of June, 1871, for Mr. Oaks. He has lands right around among them that there had been trespassing upon. I went there to estimate the cut timber.

Q. Have you been sent there by any other person recently?

A. Yes; I was requested by Mr. Oliver to look it over to see what situation everything was in.

Q. Give the descriptions which you examined in July, 1871.

A.—

Section 29 north, range 8 east.

East half and north quarter and south half of S. W. quarter of section 28.

N. E. of N. E. of section 30.

South half of S. E. of section 31.

N. E. half and south half of S. E. and N. W. of S. E. and south half of S. W. of section 32.

West half and north half of N. E. and S. E. quarter of section 33.

East half and west half of S. W. and S. E. of S. W. of section 34.

North half and S. E. half and south half of S. W. quarter of section 35.

West half of N. W. and south half of S. W. and N. E. of S. W. and west half of S. E. and N. E. of S. E. of section 36.

S. E. of S. E. and N. W. of S. E. of section 3.

N. E. of N. W. of section 4.

S. E. of S. E. and S. W. of N. E. and west half of S. E. and west half of section 5.

East half and N. W. quarter and S. W. of S. W. of section 6.

N. W. of N. W. and N. E. quarter and north half of S. E. and S. E. of S. E. of section 7.

Whole of section 8.

West half of N. W. and west quarter of S. W. of section 9.

North half and N. W. of S. W. and east half of S. E. and S. W. of S. E. of section 10.

2913 West half of west half of section 14.

East half and S. W. quarter and south half of N. W. quarter of section 15.

Whole of section 17.

North half and N. E. of S. W. and S. E. quarter of section 19.

Whole of section 20.

Whole of section 21.

North half and south half of south half and N. W. of S. W. and N. E. of S. E. of section 22.

West half of N. W. and S. W. quarter and east half of east half of section 23.

West half of N. W. and S. W. of S. W. of section 25.

South half and east half of N. E. and S. W. of N. E. and N. W. quarter of section 26.

Whole of section 27.
Whole number of acres, 11,160.

In town 28 north, range 8 east.

West half of S. W. of section 1.
South half of section 2.
S. E. quarter and west half of N. W. quarter of section 3.
Whole of section 4.
South half and north half of N. E. and S. W. of N. E. and north half of N. W. and S. W. of N. W. of section 5.
East half of section 6.
East half of N. E. and N. W. of N. E. of section 7.
East half and north half of N. W. of section 8.
West half and N. E. quarter and N. W. of S. E. of section *of* 9.

Q. State whether all these descriptions which you have given as having been upon the Devil river property, so called —.

A. Yes, sir.

Q. State about how many acres are included in those descriptions as having been covered by your examination.

2914 A. Fifteen thousand six hundred. These were all pine lands.

Q. State whether any proportion, and what proportion, you found to have been cut over.

A. I found sections 4, 10, 11, and 12, in town. 28, range 8, and some of section 5, same town. There is not any of it that is all cut clean. There is some left.

Q. What proportion of the whole 15,600 acres examined by you was cut over?

A. I think they had been over part of it, and cut out here and there—nearly half of it.

Q. Do mean nearly half of all the lumber standing upon the 15,600 acres?

A. No, sir. Nearly half the number of acres. Half the lumber is not cut.

Q. What proportion of the lumber has been removed from that part which has been cut over?

A. Some of it has been partly cut out. In section 10, in 28, and 8, it is all taken off but about 25,000 left in one corner. On 11, there is only a little spot cut, and also 9, 4, and 5 are mostly cut out, only a few trees left. Wherever they have cut there is timber left, except there are a few sections that they cut on; they cut roads all over it, and pick out the best white pine, and now and then a large Norway. I was there in the fall of 1870, and found them making roads in section 35, and through 27 and 26. They were at work there when I went in, making these roads. The men said they were at work for Robinson.

Objected to.

2915 Mr. Robinson's foreman was there. Mr. Robinson was not there himself. This was in the fall of 1870.

Q. In the winter of '68 and '69, and '69 and '70, state who lumbered upon the lands which you have referred to and examined?

A. Mr. Melville was foreman there. He had a camp on some of it; and Mr. Robinson had a camp, and Mr. Price.

Q. For what partnership or company or concern were those camps operating?

A. They said they were working for Robinson. That is all I know about it. Mr. Robinson sent me with them to locate their camps.

Q. Do you know to what place the logs removed from these lands had been run and manufactured?

A. I did not follow the logs down the stream. I was there in the spring again, and saw them running those logs down to the mouth of the Devil river, to their mill; the mill the Robinsons were then running, called the Devil river mill; the mill formerly occupied by Oliver.

Q. What was the standing timber or stumpage worth when cut clean upon this land?

A. That quality of timber they sell for $3.00 and $3.50 per M where they cut it clean, where the camps were.

Q. Was the stumpage worth more in the way in which the timber was actually cut; and, if so, how much more?

A. Worth a dollar more.

Q. How much standing pine timber is there now upon the 15,600 acres which you have recently examined?

2916 A. As near as I could get at it—and I spent a great deal of time there—from seventy to seventy-five million feet. It is worth about $3.00 as it stands. On an average, the 15,600 acres would probably be worth $1.50 per acre.

Q. State how much other property is included in the Devil river mill property, in addition to the 15,600 acres which you have already described.

A. I could not answer that correctly. I know the mill stands on section 12; that is not included in the descriptions I have given in the minutes.

Q. Can you give the descriptions of the other property?

A. Not all of the lands; I know the mill stands on fractional section 12, and that whole fraction belongs to Devil river property; I never run it out to know how many acres there are in that section; I cannot give any estimate of how many acres there are in the Devil river property in addition to the 15,600 acres; I never had anything to do with any of the rest of the lands.

Q. Are you acquainted with the property which was deeded to Cunningham by Oliver outside of towns. 28 and 29?

A. Yes, sir; some of it.

Q. What, in your opinion, is the value of that property?

A. I have almost forgotten the quantity of that land; some of it is worth $5.00 an acre; there are some lands that will sell, I suppose, for $20.00 an acre, some for $25.00.

Q. Have you ever proposed to purchase that outside property; and, if so, at what price?

2917 A. I do not remember now as I ever did; I may have had some talk about it, but I have almost forgotten what it was. I would not state now how many acres are included in that outside property, although I had a list of it once, but it slipped my mind how many acres there were. I remember the fact of some of this mill property being advertised for taxes; I suppose the taxes were not paid or it would not have been.

Cross-examination by D. B. DUFFIELD:

Q. You speak about a few of these sections having been cut over, and how much white pine was taken off; can you state how much pine was so taken off, or what quantity of land was cut over?

A. I can tell you what lands were cut over, but I cannot tell you how much; they cut on 26, 27, and 35, and town. 29.

Q. Do you mean all over those sections?

A. They have been all over, but there is not half the quantity of lumber cut on those; there have been roads cut all over.

Q. How many trees have been cut off?

A. I cannot tell you, for I did not count them; I know the big white pine was cut, and now and then a big Norway.

Q. How many feet of white pine do you suppose were taken off?

A. I cannot tell you that, for I did not measure to see; I could got at it pretty nearly by measuring the length where they took out, but I did not do that; I was last over this 15,600 acres in July, '71.

2918 Q. Did you make any record of the fact of their being, in your opinion, from seventy to seventy-five millions of pine taken from that tract?

A. Yes, sir.

Q. Did you foot it up on these different sections?

A. Yes, sir. We had it separate in the different sections, and I footed it up altogether, when we got done. We did not estimate each section by itself.

Q. What do you consider, independent of the mill, that these lands would be worth, per acre, as they stand timbered?

A. I would judge they would sell for $10.00 per acre.

Q. Suppose there were no mill at the mouth of the river?

A. The river being there, it would sell for that.

Q. What could these lands, stripped, be used for?

A. There is a good part would make good farms; I should judge about two-thirds.

Q. Any settlement there?

A. No, sir; not on the lands; some little patches cleared on it, but nobody living there. No roads but lumbering roads, and a State road runs down through it, but the heft of the pine is off to the west of it. This memorandum of lands I submitted here were taken by me from my book yesterday. Mr. Oliver was not with me when I made this examination. We were in there on that property some fourteen days; on that property and some other lands that were mixed up with the Devil river property.

2919 Q. Do you know that these 15,600 acres are embraced in what is known as the Devil river property?

A. I have had a list given to me several times for that property.

Q. By whom?

A. Mr. Oliver. And also I have been to the records and examined for myself about that property.

Q. Do you know whether the Preston lands, so called, or any part of them, were embraced in these 15,600 acres?

A. I think there are some of them that they call that.

Q. What proportion of them?

A. I do not know. I recollect of seeing it on the records. I did not take it down particularly; about that I did not care at time whether it was Preston's lands or not.

Q. Do you know what proportion of these lands was embraced in the mortgage of Oliver, Hunt, Eshelman & Cunningham?

A. If I recollect right, all that description, and some outside.

Q. How do these Preston lands compare in point of value with other lands as timbered?

A. There is good timber on it; I do not think any better. I think they are less cut than the other lands. They had a shanty on one tract of the Preston lands last winter.

Q. Can you tell what proportion of them were cut, and how much?

A. I can tell you how much is cut at that shanty. I think about 40 acres.

2920 Redirect:

Q. Is there any material difference between the value of standing timber on this property and the value of the lands after the removal of the timber, between September, 1868, and June, 1871, when you made the examination. What I mean, had there been any material rise in the stumpage?

Objected to as irrelevant.

A. I suppose lands have raised since '68. I should judge ten per cent.

Q. What are you actually doing now?

A. Everything I have done this summer has been in the woods estimating pine lumber for other people. I have come from Alpena. I arrived Tuesday noon and I was taken sick, when you proposed to examine me. I would have left this morning (Thursday).

(Signed) DANIEL CARTER.

2921 AUGUST 3D, 1871.

STEPHEN MILLER, sworn for complainant:

I live in Ogdensburgh, and have lived there about 19 or 20 years.

Q. In 1868 did you know the firm of Oliver & Robinson, of Devil river?

A. I do not know whether it was in 1868, or when it was. I know Robinson, and I made a contract with them; but what year it was I am unable to tell. It was the firm of Oliver & Robinson. I knew

Robinson, but not Oliver. It was the old gentleman Robinson. The young man I did not know at the time.

Q. You made a contract with the firm of Oliver & Robinson?

A. I made a contract with old Robinson, I will style it, because I did not know any other man.

Objection to any contract not produced.

Q. Where is that contract?

A. Whether I have it at home or not I cannot tell you. I did not know Oliver or George J. Robinson at that time. I did know him when we made the last contract, but not the first.

Q. You say you made the contract with the old gentleman. State in what capacity he acted at that time, when you made the contract.

2922 A. I think I remember that distinctly. Robinson said he had bought out an interest with Oliver up there, and that he controlled it all—the sales and receipts; and I had a little doubt about contracting with him, and he showed me the contract and I looked it over at the time, but now I am unable to tell how that contract was.

Q. What contract do you mean?

A. Between the old gentleman Robinson and Oliver. He showed me the contract.

Objection to any testimony about a contract between Oliver and Robinson not produced.

Q. Was old Robinson acting as agent for anybody; and, if so, for whom, in making this contract for you?

A. He said to me he was acting as agent for his son and Oliver, and I advanced him $500 and he guaranteed me the contract; that was the first contract. I do not know that I can remember now the very date; I have only memory; it must have been some two or three years ago, I think. When we made the contract we went into some lawyer's office in town here, I do not know whose. The contract was drawn here and I gave him a draft on the Vermont Central railroad for $500. The contract was for car sills 29 feet long; I think I was to pay him $17 per M. I do not know that I can tell you how large the amount was; I could not be positive without seeing the contract, but whatever there was, more or less; he never delivered all that he agreed to.

Q. Did you ever pay him any money on that contract?

A. The $500 I advanced him. The next time I was here I made a contract with the young man for a lot of square timber for
2923 bridging purposes, and in that contract I was to give him $13 per M. The old gentleman was then present and they wanted some money and I advanced them a thousand then. They never got out all the car sills nor all the bridge timber, and when they got all through there was a balance due of, I think, less than $300; it may have been over, but I think it was less, and they wrote to me to pay it over to L. W. Tinker. In a few days I came out and went into Tinker's office and Tinker said that the young man Robinson

authorized him to take the money from me; I said, if you will give me a receipt for it I will give you my check for it; I paid the amount to Tinker; I think it was less than $300; if I was at home I could tell by the receipt.

Q. Of what concern did you actnally receive this lumber which old Robinson contracted to sell?

A. The old man told me it was Oliver & Robinson (his son).

Q. Did you actually receive the lumber of Oliver and young Robinson?

A. I got the lumber; I do not know who the deuce I got it from, but I was up there when they were loading it.

Objected to.

I was up there when the cargo was delivered, and the balance of it came afterwards, and the old man told me he had no interest in it. It was his son's and Oliver's, and showed me a former contract made between them.

Q. Do you mean with reference to the agency of the old man for the firm?

A. That he showed me before I made the first contract.

2924 Q. Was it a power of attorney, or something like that?

A. I do not know how he fixed it; I had a little doubt about making the contract at first, and then he showed me the writings between him and Oliver.

Q. His authority?

A. Yes; he showed me his authority, and says, I will guarantee the contract, and we made a writing there, and he signed it to me as agent.

I am not certain whether there were one or two shipments of lumber from Oliver & Robinson.

Cross-examination by D. B. DUFFIELD:

Q. Did Oliver approve of this contract afterwards; did you ever see Oliver to know him?

A. I never saw Oliver since I saw him on the dock there.

Q. You never called on H. M. Robinson for his fulfillment under this guarantee?

A. No, sir; I was satisfied to get rid of him.

Q. How much deficiency was there?

A. I cannot tell you now.

Q. Did it amount to anything?

A. Yes; there was considerable that I did not get at all, but I got enough; there was a balance their due, and I paid it.

(Signed) STEPHEN MILLER.

2925 AUGUST 4, '71.

SAMUEL ELLSWORTH, sworn for complainant.

Examined by Mr. RUSSELL:

Since the spring of '68 I have lived at Ossineke, Alpena county, Michigan; I went there to run a lath mill by the thousand in Au-

gust, 1867; I worked for Mr. Oliver in the mill known there as the water mill; at that time the mill ran very well; the steam mill was started in the fall of 1868; the latter mill cut from 10,000 to 12,000 per day; I never figured up how much lumber it used up in a day; the sawing capacity of the water mill was 20,000 feet per day; the machinery consisted at that time of a four feet circular saw, an upright, usually used in water mills; an edger and butting saw, and lath saws.

Q. In the fall of 1867 what, in your opinion, was the water mill, together with the dam, worth?

A. To the best of my knowledge as to what dams cost that are built on a stream, I judge the dam would be worth about $4,000, and the mill probably the same, the way mill property sells; that would be $8,000.

Q. During the season of 1868 was the water mill running?

A. It was started in the spring and run a short time, proba-
2926 bly a fortnight—that is, one saw, the upright; it was run by a man named Charles Tiffany, who came down there and ran it a short time by the thousand.

Q. Was any contract made with any party to run it?

A. All the contract that I know of being made was what I got from Tiffany himself; otherwise, I know nothing about it.

Q. Do you know whether there was a contract with Hector McArthur?

A. Nothing, only what these parties told me; I don't know of my own knowledge.

Q. Do you know whether the mill was put in running order for that season?

A. I know that Hector McArthur went to work and filed up the saws, fitted up the lath mill, and put on belts, as far as he had belts to put on, that spring. After the water mill started running in the spring of 1868 it was stopped. I could not say who stopped it. Geo. J. Robinson was in charge of the property at the time the mill was stopped. Mr. Oliver was away. Geo. B. Melville was there. Geo. J. Robinson and H. M. Robinson were there.

Q. What did H. M. Robinson appear to be doing there?

A. I don't know as he ever took an active part in the concern. I had a little talk with him during the time the mill was running. He said they had better close down the old trap, because it was running them in debt.

Q. Did he assume direction of affairs there at that time in any way?

A. I think not. I don't know who gave directions that the mill should be stopped. Of my own knowledge, I do not know
2927 what was paid to Mr. Duffney for sawing, and what was paid to McArthur, for I never saw any contract. Since the water mill was stopped in the spring of 1868 nothing was done in the way of running it. It has gone to rack. The flume is cut away and some of the machinery taken out. In the winter of 1867–'68 I was jobbing. I had taken a job from Oliver to cut and skid logs by the thousand. I cut and skid that winter in the neighborhood of two million; it lacked some few thousands. The way I have seen sales

made in Alpena such logs were worth $8 a thousand. I have seen logs sold for $8 in the boom there.

Q. Can you state how many logs were cut and hauled by the concern at Ossineke that winter?

A. I saw Willis Van Buren scale that winter, and my brother was jobbing; I saw his scale and our own scale. From the three camps there was six million, or thereabout. There was another camp lumbered, and they put in, I should judge, nearly two million beside; but I didn't see the scale. It was only as I saw the logs at the landing; I was over the logs. That is my estimate.

Q. How many logs were cut and hauled on that property in the winter of 1868–'69?

A. I only saw the scale of one camp, as I was foreman in it the latter part of the winter. The other two camps, all I saw was the logs. I could make a rough estimate. I should judge there would between seven and eight million.

Q. During the winter of 1869–'70, how many logs were cut and hauled on that property?

2928 A. It would be about the same. They were not all cut on that property. There were some logs cut on property not belonging to this Ossineke property. That has been paid for since. There was in the neighborhood of six millions cut on the Ossineke property in the winter of 1869–'70. The winter before there was some cut on the other property.

Q. The winter of 1870–'71 how many logs were cut and hauled on this property; that is, the last winter?

A. I could not say. I cannot give an estimate. I didn't work there last winter, and I have not been on the grounds that were lumbered. I helped to drive these logs in the spring, and know how many logs were cut; that is, I can give an estimate of how many were cut, but I can't tell how many, for I was not in the camp. I can't state where they were cut.

Q. Give an estimate of how many were cut without reference to where they were cut.

A. There was about six millions.

Q. State at what mill these logs which you have spoken of as having been cut and hauled during the last four winters were manufactured.

A. The greater part of them were manufactured in the steam mill on the Ossineke property. They have all been manufactured there in the two mills, but the mill in the spring of 1868 ran only a short time. A man named Duffney ran an upright there about two weeks, or such a matter, and cut some few thousand feet—a small amount; I don't know exactly how much.

Q. Will you state whether you are acquainted with the manner in which these logs have been cut in the woods during the last three or four seasons, and your means of knowledge?

2929 A. I have been over the grounds where they were cut, but the last winter I can't say that I have been over the grounds where the operatives were. I went over the grounds with Oliver last year about this time. It has been cut by making roads into the best

timber and cutting the best timber, leaving Norway and common white pine. I heard those parties say they wished to get out lumber that run to the highest grade.

Q. How much more should stumpage be worth by cutting timber in that manner rather than in the ordinary way?

A. From $1 to $1.50.

Q. Can you give the descriptions of the portions of land upon which this cutting was done, and done in this manner, for these winters of '67 and '68, '69, '70, '71?

A. It was cut in 26, 27, 35, and 36. Those four, I think, are the only sections I have been over. They are in town. 29 north, of range 8 east, and there is section 4; that is in town. 28 north, of range 8 east, and section 3 also; that is, a part of section 3 they owned, and part of section 3 is cut in the same way; that is, in town. 28.

Q. Will you state what improvements, if any, have been made upon those premises since Henry S. Cunningham came there in September, 1868?

A. There has been since that time to my knowledge a new steam-engine put into the mill, a gang, and two patent edgers. There have been four dams built upon the river to facilitate the running and handling of logs. The dams are breaking away a good deal, but the other improvements are substantial. There is a slab-dock, or at least a basin for a harbor, and four or five tenement shanties—four at any rate—that were built there.

2930 Q. How much, in your opinion, if at all, have these improvements enhanced the value of the property?

A. It is something I have not given any thought, and I cannot offer a judgment. During the absence of Oliver in the summer of '67 Geo. B. Melville managed the business for him. In 1868 Melville acted as general managing agent, I think, for Oliver & Robinson.

Q. Who took charge of the lumbering camps in the winters of '68–'69 and '69–'70?

A. The lumbering camps had regular foremen in them, and Melville was in a camp called the Company's Camp, and seemed to have supervision over that and the other camps, to keep them straight.

Q. Over all of them?

A. Yes, sir. I was at Ossineke at the time Henry S. Cunningham came there and took a transfer of Oliver's property. To the best of my knowledge, it was some time the last week of August, '68, that he came there. He remained some ten days or thereabouts. I received directions by Cunningham & Oliver (I think it was Oliver gave me directions) to go into the woods—the two were together—to go into the woods and see how many sections were cut over and how much was cut on them. I was gone on that mission about three days. I had to go in two places; one place about two days, and the other one day. Then Mr. Cunningham went into the woods with me, but we were gone only a few hours. He rode out on horseback. We went out to section 21, a section one-half of which has been lumbered, and on the other half there was no lumber to amount

2931 to anything. When I came out of the woods I met Cunning-

ham and Oliver (I think they were coming out of the garden), and I talked with them on the bridge. I told them what I had seen in the woods. Cunningham asked me how many sections had been cut over, etc., and I told him to the best of my knowledge, and how much had been cut on each section. Then in the evening, while I was in the office, he asked me if I had been over section 17, town. 29 north, range 8 east. I told him I had. He asked me how the timber lay on it. I told him, describing it as perfectly as I could. Then he turned to George J. Robinson, who was present, and said: "He has given a good description of it, as I have been over the lot myself." I don't recollect that Cunningham was at Ossineke more than once that season; at any rate, if he was, I had no business with him. I was present upon the occasion of the signing of the papers between Oliver and Cunningham, having been called there by David D. Oliver to take the acknowledgment of his wife. There appeared to have been some talk before that I didn't hear, for the recollection that I have is that Hawkins requested Cunningham to read some papers, as he said, to let parties know that he had a right to act as an agent then, or had some authority to act, something to that effect; and at that time Cunningham read what I supposed to be a bill of sale, or something to that effect, either a bill of sale or description of property that was transferred. He said that he appointed Geo. W. Hawkins as his agent, to perform the duties, to run the mill, or run the institution, as he would do in his absence. He made a statement there while I was present in regard to buying this property.

2932 He says, "I have bought this property," (which at the time I thought was needless, as I saw the papers,) that he had bought this property, and calculated to run it to pay off the indebtedness. I do not know that these are the words, but it was something to that effect. He told Hawkins, when I was by, as the season was getting advanced to go into the woods and look over the grounds, and locate camps; to use his means judiciously, as he wished to locate the camps in places where the timber would run as high to upper qualities as possible, as he wished to make all out of the property he could, and as soon as he could to pay off this indebtedness. I then went into the woods with Hawkins and was in the woods some five days. We went to look over the grounds. We made our selections for camp grounds, and at the same time went on to the river and picked out the ground where the dam now is, to facilitate the running of those logs that were lumbered that winter.

Q. Are you able to give the date of the transfer and the time of the signing of the transfer from Oliver to Henry S. Cunningham?

A. I could not, as I made affidavit before in regard to that. When I made affidavit first, I went to the recorder's office in Alpena, and there found the records, and based my recollection upon that time. But the matter seems to me like this: As I was keeping dates along with my own time, etc., that if they had been antedated I should have noticed it, but I did not. I didn't take the acknowledgment of the deeds, for the reason that I was not acquainted with matters of that kind. They had a notary public there. He began

2933 to give me instructions, and I told him he had better take them. I was justice of the peace. I am still residing at

Ossineke; am farming, but not at work on that property; am at work for a man named Rymar.

Cross-examined by Mr. DUFFIELD:

In the winter of '67–'8, I was jobbing under a contract with Oliver. In the winter of '68–'9, I was in different jobs. The fore part of the winter I scaled some for some of the company. Then I got out some dock timber during the winter, and the latter part of the winter I went to work as foreman with Price, one of the jobbers.

Q. Then you had no position in connection with the firm of Oliver & Robinson in the winter of '67 and '68?

A. I was working under this contract. The contract was not signed by Robinson; it was simply signed by Oliver.

Q. Then you had no position at all in connection with their business that winter; you were working under that contract?

A. Yes, sir; I was working under this contract.

Q. You were not employed by them either in the winter of '68–'9?

A. Part of the time.

Q. You were working round on these different jobs?

A. I was employed by the company during the winter of '68–'9; about half the winter getting out dock timber; and part of the time scaling. I was employed in scaling somewhere in the neighborhood of three weeks. It would be the first sleighing in the fall.

2934 Then I worked on dock timber up to some time in February. During that three weeks I scaled something rising 200,000. That is all the scaling I did that winter for them.

Q. How do you come to estimate the total amount of logs got out in the winter of 67–'8 at six million?

A. My estimate would be more than six.

Q. I want to know whether you scaled any logs in any camp except your own that winter.

A. I am speaking of '67–'8. I scaled no logs that winter.

Q. How many did you scale in '68–'9?

A. Something rising 200,000; a few that I scaled in the fall. In '69–'70 and in '70–'71 I scaled none.

Q. How do you know, then, the actual amount of logs got out by those parties during those winters, by general estimates merely?

A. As I say, the first winter of '67–'8 I saw Van Buren's scale—my brother's scale. (He was scaling at the camp of Ellsworth & Robinson and our own camp.) I saw the scales of these three camps, and was various times over the logs got out by McCoy, that Hector McArthur scaled. I didn't see the scale, but was over the logs. That is the only way I get at it. I made no personal scale of these logs, simply an estimate of one lot and what I saw of the figures of the others; and I don't know the exact figures to-day.

Q. How many acres can you state, of your own knowledge, were cut in this extravagant way that you speak of?

A. My own knowledge would not lead to over 80 acres, as

2935 I simply saw the lands from traveling over the roads through these different sections; didn't go back in the country.

Q. Can you tell, of your own knowledge, what amount of logs

were got off of this Ossineke property during your stay there, not including the Preston lands, but that which was known strictly as the Ossineke property?

A. No, sir; though now I can't recollect what were the Preston lands, unless I have a plat or something to refresh my memory. I don't know what lands the company lumbered off of last year. I was not over the lands last winter; was not in any of the camps. I saw and run the logs, and was at the camps, but not over the lumbering grounds, to know where they were cut, so I cannot state from what lands they cut last year.

Q. Can you state from what lands they were cut in '69–'70?

A. One camp lumbered on section 22. I judge that something rising two and a half millions was cut from that section. I don't know, but they run across into section 28, but it would still be on the company's lands. In '68–'69 they lumbered on section 4, section 3, section 10, and some cutting was done on section 5, in town. 28 north, range 8 east; also in the spring on sections 15 and 22, in town. 29, and some on section 27; I don't know how much. That was when Price moved up in the spring. I can't state what day Mr. Cunningham arrived at Ossineke. It is simply an impression that I have that it was some time during the latter part of August. What I arrive at my impressions from are about the length of time
2936 he was there, of my being in the woods during his stop there, and of the signing and transfer of these papers, and my being present at the time, and not noticing that they were antedated—anything of the kind.

Q. Can you tell me how many days before they were signed he was there?

A. I cannot He was there a number of days. I remember distinctly of his going out riding once with Geo. J. Robinson. I am quite certain the papers were executed after he and Robinson went out. It was on Sunday they went out riding. My little boy was out the same day and got thoroughly wet. So did they. I was in the woods three days after Cunningham came there; then he went into the woods himself with me; that would make four days, and then this Sunday would make five, that I know he must have been there before these papers were signed. I can't say that I saw him the first day he came there. The first I saw of him he was walking with Mr. Oliver on the track. It was in the evening. I don't know what day of the week. I don't know how he came there.

Q. What was he doing on that occasion, when you first saw him that evening with Oliver?

A, They were simply walking up and down the track. I saw him the next day after that; saw him and Oliver at different places. They seemed to be over the grounds and in conversation. I saw them across the river from the mill property, over west of the mill, on the west side of the river. I don't know what they were doing. I saw them walking across the grounds.

Q. Did you see him the next day after that?

A. I can't say. It was not many days after they were there
2937 before he and Oliver together wanted me to go into the woods.

It might have been the next day or the next after that that I went into the woods. It was shortly after his arrival there, anyway. I was not called to acknowledge or witness those papers until after I had come out of the woods. I couldn't say how many days that was from the time I first saw him. I can't tell what day of the month or week I was called in to witness those papers. The papers were dated and I didn't notice anything wrong or strange in the dates, nothing of that kind attracted my attention. The papers were acknowledged at Mr. Oliver's house at Ossineke. Mr. Oliver, Mr. Cunningham, George W. Hawkins, Joseph Reed, Reuben E. Gallup, Mr. Oliver's wife, and myself, I think, was the party present.

Q. What did the parties do after the papers were signed; right away after that, where did they go?

A. I don't know. My impression is right away after that they went away; they went to Alpena from there—that is, Oliver and Cunningham. Their bookkeeper, Reuben E. Gallup, took the acknowledgment. All I saw him taking the acknowledgment of was Oliver's wife. Oliver signed it before. I saw them all sign, but I only saw the acknowledgment as taken of Oliver's wife. It was signed in the room that evening. I supposed it was those papers; there was a multiplicity of papers before them, and they were sitting at a table writing. I couldn't swear positively they were those papers. Mr. Gallup gathered up the papers and took the acknowledgment of Mrs. Oliver.

Q. You cannot positively swear that Cunningham came there in September or August, can you?

2938 A. I cannot. As I said before, all that I based my idea on was what I saw of the record in the recording office since. The last work that I did at Ossineke for the parties in interest there was driving logs this spring. On both drives I judge I drove somewhere in the neighborhood of six millions. I don't know how much they have sawed this year. I have not worked about the mill this summer. I don't know how much they have on hand at the present time to be sawed. At the time the water mill was stopped the timbers were in a decaying condition. There was good machinery in it; it had been fitted up that spring. It was in a dilapidated condition; the timbers were standing, but you could see the work of time upon the posts. They were not rotted off, but you could see where they were starting to decay. I never examined those timbers, and don't know how badly they are rotted, but I never felt at all unsafe in going through it, and would not feel so now. I think that for the season of '68 the water mill could have been run profitably in connection with the steam saw-mill; since then I don't know. We had that winter a class of large logs that could have been cut to better advantage on an upright than on circulars; that is, to get a nicer class of lumber out of them. After that the logs were smaller, so that the circulars would have taken hold of them as well, if not better.

Q. Then you mean after that it could not have been run to advantage?

A. I had better answer that by saying I don't know.

2939 Q. Would it not have shut the steam mill down to have attempted to run that mill at that time; would not that have been the effect of running the water mill?

A. In getting the lumber away from the mill it would have conflicted; there is a bridge running over the track from the other mill; but that is all that I know of.

Q. Wouldn't it have so conflicted with the running of the mill that the two could not have been run continuously together and sawed to advantage?

A. The mills could have been run and the lumber taken from one in the night, or some time when the other was not running; it is a question I never gave any thought, and am not prepared to say at all. I have no trade. I have worked at farming, lumbering, hunting pine lands, etc., for the last fourteen or fifteen years. I was born the first day of December, 1836.

Questions by Mr. RUSSELL:

Q. What was the contract price per thousand for running the steam mill, and what was the contract price per thousand for running the water mill?

A. I couldn't answer the question, for I saw no contract between Oliver and Duffney, or any other person, in regard to running. I only got it from Duffney in regard to what he was to get for running the mill that spring. From general principles, a water mill can be run cheaper than a steam mill—one-third cheaper.

Recross-examination by Mr. DUFFIELD:

Q. Do you know that that water mill ever yielded in any one day twenty thousand?

2940 A. Yes, sir; I know from scaling logs myself in '67; it did that in about twelve hours; the average yield was somewhere in the neighborhood of that much in '67; the supply of water to that mill is not good; the dry weather used to cause us to shut down.

Q. Could that mill run any one season right through with any such yield as you give it?

A. No, sir; not in dry seasons; in the season of '67 we had it wet, so that we averaged that right along in the fall, or nearly that. Every log that is put into the steam saw-mill has to come through the dam there, and as they sluice the logs through the dam to the steam mill they half to sluice the pond off, then they can't run until they get a new head of water.

Q. How, then, could you run the steam mill and water mill to their respective capacities together?

A. We could not. I have heard, but do not know what the steam mill now cuts or has cut; from working in mills, and from seeing that mill run, I judge the capacity of the steam mill to be from sixty to seventy thousand per day of twelve hours; I have traveled from Alpena to attend this examination; was going by on a visit to St. Clair; came to Detroit yesterday; will leave to-morrow morning.

(Signed) SAMUEL ELSWORTH.

2941 AUGUST 11, 1871.

ROBERT ROBINSON sworn for complainant:

I reside in Cheboygan, Cheboygan county, Michigan; I have lived there about two years; my business is lumbering, and I have been in that business about five years; I formerly resided at Ossineke; I came there in the fall of 1866 and went away in the summer of 1869; in the season of 1867 I worked for David D. Oliver, and I worked in the camp for him that winter; at that time the water mill that was on Devil river was running; it was in good condition at that time and was cutting from twelve to twenty thousand per day and about eight thousand lath.

The machinery consisted of a circular saw, upright edger, butting saw, and lath mill; in my opinion the mill at that time was worth about $500—the frame of the mill; the dam and privileges were worth about $5,000.

In the winter of 1867–'68 I was employed by the firm of Oliver & Robinson jobbing, putting in logs for them; that season I cut, hauled, and put into the river 1,800,000 feet of logs; the price for cutting, hauling, and running was $4 per thousand, and $4.25 and $4.50; they were worth at the mill $6 in the stream; stumpage was worth $2.50; Oliver & Robinson got out that season about
7,000,000 feet of logs; this I state of my own knowledge;
2942 there were a million and a half of old logs wintered over;
the company had six teams hauling logs to the steam mill—five draught teams and a span of colts; with them they hauled all winter.

The general agent and overseer of the camps in 1868 and '69 was George B. Melville. He was general foreman for the company, as I understood it.

The water mill ran a short time in the spring of 1868. I understood it was stopped by orders. I understood this by the men that ran the saw. I could not say as there was much difference in the cost of manufacture between the steam and water mill. In the spring of 1868 the personal property of Ossineke, as far as I am able to tell, belonging to the firm, consisted of twelve horses, worth $1,800; a small colt worth $60; two yoke of cattle, worth about $500; three or four cows, worth $35 each; a lot of sleighs (logging sleighs), camp equipments of nearly all sorts for lumbering, chains, etc. There were about 1,400,000 feet of lumber that was sawed, worth about $13 or $14 per M; about 8,500,000 feet of logs, worth about $7 per M. The logging sleighs that I referred to were worth $40 a set; the wagons and trucks were worth $100 each. There were also six sets of double harness, worth $40 a set. There was also some merchandise; I could not say how much. There was a good deal in the store; a reasonable stock for the business. There were a good many tools in the blacksmith shop; I could not place any valuation on them. There was considerable seasoned lumber
in the blacksmith shop, in the carpenter shop, and a good
2943 many tools—farming tools, plows, drags, and such tools necessary to carry on farming; tools for running logs, hand-hooks, and levers.

There was some shingle wood there that season that they let run out in the lake. There was shingle wood there—some that I put in myself in the summer of 1867. I could not tell you the valuation of that. I got the same as I did for the logs for putting it in. There were some cedar posts drawn to the water mill for the purpose of being sawed; large ones, as I understood. They were worth about eight cents apiece. I think in all there were about eight to eight and a half thousand.

That season there were four saws running in the steam mill, two circulars, an edger, and a butting saw; four boilers set, one engine running. There was spare machinery. There were four boilers besides, which were not set up; also fire grate, a smoke stack, and mud pipe, and fire front for putting up boilers. This steam mill cut about 40,000 feet per day.

The railway and the dock that spring were in good condition. They were worth about $7,500.

I saw Henry S, Cunningham at Ossineke in the season of 1868, about the 1st of September. I asked him if he knew whether the company there was going to do any lumbering or get their business straightened up. I told him that I wanted to know whether I could lumber for them that winter or whether I should have to go away. He told me I had better make up my mind to stay, that they would probably do considerable lumbering; that they were getting their business straightened up, and there would probably be considerable logs put in, and he advised me to stay. R. E. Gallup and
2944 G. J. Robinson were there at that time. I heard Mr. Cunningham talking with Mr. Gallup in the office.

Q. What did he say?

Objected to any testimony of conversation between Cunningham and Gallup.

A. Gallup asked him if he could pay him any money—what was due him, and Cunningham said if he could arrange his business so as not to want any money for about a year it would be better; that he did not know that they could pay out any money that fall. I heard Cunningham also talking with G. J. Robinson some; he (Cunningham) said, "it would be better for all parties;" I could not tell much what the conversation was; it was in the office they were talking; I understood by the talk that it was something about lumbering that winter.

Q. What do you know about Hawkins going to the State of New York about that time, and for what purpose he went, and who sent him?

[A.] It was before that a short time that Hawkins went to New York; sent by H. M. Robinson; I can tell what Hawkins told me.

Q. Do you know from any other source?

A. I know that he went; got $100 to go with from H. M. Robinson; I heard H. M. order Gallup to give it to him. (Objection to anything H. M. said.) The instructions were to go as quick as possible down there "and see to that matter;" I did not hear him say what matter.

2945 Q. Who acted as Cunningham's agent after he was there, if anybody did?

A. George Hawkins assumed to be his agent, and acted as his agent.

Q. Who proposed to run the property after Cunningham was there, and for what purpose?

A. Geo. Hawkins and Geo. Robinson were the men that ran the property, as I understood it.

Q. With what end in view was the property run?

Objected to, it not being possible for the witness to tell what end they had in view.

A. I know what Geo. Hawkins intended to do.

Q. What was that?

Objected to.

A. He intended to locate the camps for lumbering as soon as possible; he and I went up into the woods for the purpose; he asked me where I thought the best pine was—where it was best to get out a good winter's lumbering.

Q. Do you know for what purpose the earnings were to be applied?

Objected to what Hawkins said.

A. Hawkins told me at that time that he controlled a three-quarter interest for Cunningham; and he talked with me as to where we could get out the best winter's work on the lands; he told me they were to run the property and straighten up the old affairs of Oliver, and get things in better shape.

Q. How long after Cunningham left was this statement made to you by Hawkins?

2946 A. I could not say positively whether it was the next week, Monday or Tuesday, or the next week after that Hawkins went below, and then came back in a short time, and whether this conversation was before he went below or after he came back I cannot say positively. The name of the firm in the winter of '68 and '69 was Robinson, Haines & Co. part of the season. I got bills signed that way, and then it was Cunningham, Robinson, Haines & Co.

Q. Did you know any concern called "The Ossineke Mill Company?"

A. Yes. In the fall there were bags marked that way, and the firm kind of went under that head a short time. I do not know of any bills being signed to my knowledge, but it went under that head for a short time, as a general thing.

Q. Was the Ossineke Mill Company before or after Cunningham, Robinson, Haines & Co.?

A. Before. In the season of 1869–'70 I got out 1,600,000 feet of logs, or thereabouts. My instructions with regard to getting out logs was to get out the best white pine timber. These instructions I received from Geo. J. Robinson and Geo. B. Melville.

Q. What did the logs cost to cut and run that season?

A. About $5.00 per thousand to cut and run to the mill. They were worth $9 per thousand. Stumpage was worth $3 per thousand, and cut the way it was cut. I should think it was worth 75c. or $1 a thousand more than if it had been cut clean. In the
2947 winter of '68–'69 the company got out about 6,000,000 feet, as I remember now; it may have been more or less.

Q. State whether you were much over the Devil river property that season, and how extensive your examinations were with regard to the amount of pine timber there, and state what your estimate is of the amount of pine timber upon that property during that winter.

A. I could not tell. I was over it considerably, but not for any purpose of estimating it where I went through the property. It was good pine, and a good deal of it. I cannot tell what was on the property.

Cross-examination by D. B. DUFFIELD:

While I was at Ossineke I was in the employ of D. D. Oliver first, and continued in his employ until the fall of 1867; then I went into the employ of Oliver & Robinson. I staid in their employ until September, 1868. I was then in the employ, as I understood it, for a short time of Cunningham & Robinson, and then this mill company, and then Robinson, Haines & Co., and then Cunningham, Robinson, Haines & Co. until the commencement of May, 1869.

Q. Were you ever employed by any corporation, association, or partnership known by the name of the Ossineke Mill Company?

A. No, sir; not of my knowledge. I only understood the firm was going under that head.

Q. What do you mean?

A. It assumed to be so. There were supplies came there.

2948 Q. Do you know of your own knowledge whether there was any copartnership between any parties whatever under that name?

A. No, sir; I do not. There were goods came there marked "Ossineke Mill Co.," or "Lumbering Co." At about the same time I understood there were some bills signed "Robinson" and others.

Objected to.

Q. I only want to know to know what you know of your own knowledge. Did you ever see any bills signed in that way?

A. No, sir; I do not remember seeing them.

Q. Did you ever see supplies so marked?

A. I have seen bags, I am positive. They may have been all in bags—there may have been some boxes marked that way. There was freight came on the dock marked that way; I am positive the bags were; I am not so positive that the goods were.

Q. What freight was so marked?

A. I could not say whether the freight that came the time the bags did, in boxes, or anything different from bags, was so marked or not.

Q. How came you to estimate that dam as worth $5,000?

A. I think it is worth that to build it.

Q. Do you mean the privilege or the mere expense of constructing the dam, or both?

A. Both, I think, are worth that; they were worth that in 1867.

Q. How do you know you ran 1,800,000 feet that season?

2949 A. I know it; I cut, or caused to be cut, and put in that amount; I know by the scaler and by the books.

Q. Where are your books—when did you see them last?

A. In Cheboygan.

Q. When did you last look at this account so as to see the number of feet that you got out that season?

A. I have not looked at it lately; I may have done it that summer.

Q. Have those figures been furnished you by Mr. Oliver lately?

A. No, sir.

Q. By anybody else?

A. No, sir.

Q. Has any memorandum of the facts to which you have testified been submitted to you by Mr. Oliver, or anybody else?

A. No, sir.

Q. How do you know there were seven million of feet got out that season by the company?

A. I know about what was got out by each camp.

Q. How do you know—by the scaler?

A. I know by the scaler and by the foreman of the camp.

Q. Did they tell you?

A. Yes, sir; I did not scale them myself; I do scale logs sometimes. I did not scale the amount I go out myself.

Q. Is it your opinion that it did not cost any more to run that steam mill than it did the water mill?

A. I said that it did not cost any more to manufacture lum-

2950 ber than it did in the water mill. It cost considerable more to run the steam mill than the water mill. I believe the steam mill takes 20 or 30 men to run it; it costs considerably more; it is a larger mill; the water mill only takes 8 men.

Q. Taking into consideration the amount of lumber sawed by the steam mill, and the amount of expense of running the water-mill, which was the cheapest mill to run?

A. That is what I meant to answer before. I think there is very little difference in the expense of manufacturing lumber in the steam mill and the water mill.

Q. Have you ever made any estimate about it?

A. No, I have not, in particular. I saw both mills run. I have never had charge of a mill myself.

Q. How did you get at the number of sleighs, harness, and other articles of personal property that you have enumerated here on the premises?

A. I know by my own knowledge how many horses there were; I know what cows there were, what sleighs, and harness, and camp equipments.

Q. What was your particular business there?

A. Lumbering.

Q. In the woods?

A. In the winter time I was in the woods pretty steady. In the spring and summer I was around the premises.

Q. What were you doing?

A. I worked at the mill some. I was kind of seeing to my horses. I owned some horses there then. A good many days I was doing nothing only around the mill and barns.

2951 Q. What employment did you have in the summer around there?

A. I worked at a good many different kinds of work on the river and in the mill.

Q. Under their directions?

A. Yes, sir.

Q. Were you working at monthly wages?

A. Most of the time, or day wages. I was along about the 1st of September I saw Cunningham. I cannot tell the day, but I think it was the 2nd or 3rd. Hawkins was in charge of the men about a month.

Q. Do you say that he was in charge of that business, to the exclusion of everybody else, for a month, and maintained it to the exclusion of everybody else?

A. Yes, sir.

Q. From what time to what time did that month run?

A. In September, 1868.

Q. What did he do in that time in connection with that business?

A. He gave orders around there a good deal, went up in the woods with me—one time we were gone a day or two on sections 15 and 21.

Q. To whom did he give orders, and what about?

A. He did to me for one I am positive of.

Q. When you went into the woods?

A. Yes, sir.

Q. What orders do you know of his giving to anybody else?

A. He was up around the other camps. There was a camp there in the woods.

2952 Q. I want to know what other orders you know of his giving to parties besides you?

A. I do not remember just now what his orders were; I heard him talking with men there.

Q. Did he take charge of the books to your knowledge?

A. Not of my knowledge; he was in the office considerably.

Q. Did he take charge of the funds and pay out the funds?

A. I could not say; I did not see any transactions with money that he had.

Q. What one thing do you know of his doing besides going into the woods with you in the management of that business during that month?

A. He went up to the other camp; I saw him go up, and he told me he was going up; I do not think he was gone over a day any time; he went up once or twice or three times, I should judge; it seems to me he went away with Cunningham and came back again

in a few days; he stayed about two weeks after that I believe; I think he went below again in that same month. I believe he did not come back again after he went below the second time.

Q. During the time Hawkins was there did George Robinson cease to have any control over that business as a matter of fact, or did he continue there as before?

A. Geo. Robinson had control all the time while Hawkins was there.

Redirect:

2953 Q. You speak of the mill being worth $500. What do you consider the mill and machinery worth, as it stood in running order, in the spring of 1868?

A. I should think nearly $2,000 with the machinery in it. The dam, machinery, mill and all were worth nearly $7,000, to the best of my opinion.

Q. In reference to Hawkins having exclusive control, how did you understand the word exclusively?

A. I understood Hawkins had control of the three-quarter interest for Cunningham, and Geo. Robinson had a quarter interest, as he assumed before. The first winter I worked there I worked for Oliver and Hawkins. There was a firm by that name for awhile. The bags were marked Oliver & Hawkins.

(Signed) ROBERT ROBINSON.

AUGUST 1, 1871.

REUBEN E. GALLUP sworn on behalf of the complainant.

Examined by Mr. RUSSEL:

I now live in the town of Summit, Jackson county, Michigan. My occupation is farming. I went to Ossineke as business clerk
2954 and book-keeper for David Oliver about the 15th of January, 1867, and remained there until about the 20th of October, 1868. I worked for the firm of Oliver & Robinson from the time the copartnership commenced until I went away, on or about the 20th of October, 1868, I think. I first saw George J. Robinson after I went there in the fall of '67; saw him at Mr. Oliver's house. His father, H. M. Robinson, was with him the first time he was up there. They were there to look at the property. They went down to the mill, looked at the mill, were in the store looking at things, and went up into the woods looking around. I heard both George J. and H. M. Robinson talking about the business, but I heard George J. Robinson talk the most. I heard him (George J.) talking with Mr. Oliver one evening in the office. I think it was in October, '67, but am not positive as to the exact time. They were looking over the maps and talking about the land. I heard them speaking about the Wayne lands—no, I mean the Preston lands. I heard something mentioned about collateral securities. I didn't pay much attention at that time.

I think the two Robinsons remained there that time about two or three days. Then George J. Robinson came back at the same

time Mr. Oliver did in the fall. I think it was the latter part of November, or thereabout. H. M. Robinson did not come back until along in the latter part of the winter or spring of '68; it was the next day after St. John's day.

Q. State whether H. M. acted as agent for any persons after he came back.

A. I think that he did. He acted for the firm of Oliver & Robinson, I judge.

2955 Q. State what evidences you saw of his acting as agent in that way.

A. I saw his name on the firm's card.

Objected to, unless the card is produced.

Q. As what?

A. As agent. The second time that he came up there, in the spring of '68, he came to see how they were getting along, and see whether it was best to make a contract with some parties below about a bill of timber or lumber; something that was longer than they were getting out. I head them talking about it. At that time I think he remained not over a week. He returned again, I think, the fore part of April, with some money to pay to the men that worked in the mill. Oliver and George J., I think, were not there at that time. They were down "below" here, as we call it. I addressed my letters that I wrote to George J. Robinson to Detroit; also letters that came there for him I forwarded to Detroit. I think he was then at Detroit to charter vessels, make sales, send up supplies, do collecting, and such things as pertained to the business. H. M. brought up a thousand dollars, and then he came up another time after that and brought two thousand dollars. The first money that he brought up he said belonged to his son, George.

Q. What about the second?

Mr. DUFFIELD: I object to anything H. M. Robinson said as incompetent and irrelevant.

A. He said it was his own money. I asked him how I
2956 should charge it. He said I might credit it to George, his son. He gave me instructions to credit it to George J. Robinson. I obeyed his instructions. I was then book-keeper for Oliver & Robinson.

Q. What did he tell you to do with the money?

A. He told me to pay it all out to the men, but I must not let Mr. Oliver have any of it. That, I think, was in June, 1868, some time.

Q. Were you at that time, as book-keeper for Oliver & Robinson, in the habit of receiving and obeying instructions from any other person than G. J. Robinson and D. D. Oliver?

[A.] Yes, sir; I obeyed Mr. H. M. Robinson, I obeyed him in regard to the money, where to place it, and all the things that he told me to do. After H. M. Robinson came in June, 1868, he assumed control as much as any one. Mr. Melville also was there. After H. M. Robinson came the water mill was shut down—he ordered it shut down—and the men on the river were discharged by

his order. Oliver was not present at Ossineke when these things were done, neither was George J. Robinson. I think that H. M. Robinson acted with authority in doing these things. I think that Geo. J. Robinson approved his acts, from the fact that I saw a letter that he wrote to Mr. Oliver. I think the letter was some time in April.

Q. State whether in the fall of '67 any inventory of merchandise or personal property was taken.

A. Yes, sir; the merchandise in the store was taken by myself and another young gentleman named Eri Toland. It amounted, I think, to a little over eight thousand dollars.

2957 Q. Who directed this inventory?

A. The letter was written by George J. Robinson. I couldn't say whether it was signed by him or by Oliver & Robinson. Oliver was not then at Ossineke. I suppose they were together at Detroit. I think all the property was inventoried, but I did not inventory all of it.

Q. What was the amount of the inventory of the boarding-house and fixtures?

A. It was not inventoried by being itemized. It was estimated at ten thousand dollars. The estimate was made between George J. Robinson and myself, after he came up there. He put down the words "boarding-house and fixtures," so as not to go over the whole ground of taking up everything. Mr. Melville also helped to take the inventory. He was then acting in the same capacity that he had been acting for Mr. Oliver—general manager. The inventory that I have just referred to was used in starting the books of Oliver & Robinson. I think the inventory was correct, or as nearly so as could be, with the exception of some goods that were bought of A. F. Fletcher & Co. I think they were inventoried a little too high, from the fact that they were bought when things were very high, and they were then somewhat lower, and they were somewhat shop-worn. I inventoried them at cost price—the list they had there.

Q. Which member of the firm supervised the opening of the books?

A. Both did; but George J. Robinson more than the other member of the firm. The books opened were a day-book, jour-

2958 nal, cash-book, general ledger, and men's ledger. By men's ledger I mean the book in which the men's account was kept.

Q. State whether there was any transfer of the running accounts kept on Oliver's books to the books of the new firm?

A. Yes, sir. All the accounts in the men's ledger and all others the running accounts. They were transferred in this manner: All persons Mr. Oliver was indebted to were credited in the firm's books and Mr. Oliver was debited; and all credits due Mr. Oliver from other parties were credited to him in the firm's books and charged to the parties—those on the balances between the debits and credits, I mean. If there were any balances in Mr. Oliver's books due to parties, they were transferred into the company's books by debiting Mr. Oliver's with the amount due them in Mr. Oliver's books, and they were credited in the firm's books with the amount due Mr. Oliver. Both these gentlemen gave me instructions in regard to transferring

the accounts. When the accounts went into the firm's books they were assumed by the firm of Oliver & Robinson in transferring them that way. Mr. Robinson first figured the balances in the men's ledger, and then I looked them over after him and made the transfers. The transfers were not limited to the men's ledger. After the transfers were made and Mr. Oliver had rendered up his account and purchases below, there was a balance in his favor of I don't know exactly how much, but there was over six thousand dollars at the time. There was some of that balance used in this manner: Mr.

2959 Robinson gave some notes below, I think, for some transaction where Mr. Oliver was debited for six thousand dollars, consequently it made this balance some smaller. However, I can't tell to a certainty how much the balance was after this. Six thousand dollars was charged to him.

Q. How soon after the finding of this balance was this taking up of notes below?

A. I couldn't state the time; and furthermore, I don't know as either of the parties knew to a certainty what balance was due on either of them. By information they got of me, however, they might. The water mill ran during the summer of '67. I can't state exactly how long, but it ran until the steam mill commenced, which, I think, was some time in September.

Q. Can you state how much lumber it cut in that time, or nearly how much?

A. About sixteen or seventeen hundred thousand feet.

Q. Were you at Ossineke at the time Henry S. Cunningham arrived there in '68?

A. I met Mr. Cunningham and Mr. Hawkins at Alpena. They went to Ossineke before I did on that day. I was not there when they came to Ossineke. I was called upon at that time to take the acknowledgment of the deeds running from Oliver to Cunningham. The papers were read in my presence at that time. They were read at the request of Mr. Hawkins. After the transfer Mr. George Hawkins was put in the place of Cunningham.

Q. Who were present at that time, as near as you can recollect; at the time you took the acknowledgment, and at the time Hawkins was put in the place of Cunningham?

2960 A. Mr. Joseph Reed, Mr. Oliver, Mr. Cunningham, Mr. Hawkins, and myself were present. I know Mr. Ellsworth; I could not say for certain whether he was present or not. He might have been, but I don't remember it. The paper, I think it was a bill of sale, was read by Mr. Hawkins, and then Mr. Cunningham said that he had purchased the property and was going to run it, and he would leave Mr. Hawkins there to act in his stead in his absence. That was to show that Mr. Hawkins was acting with some authority; that we should know he was acting as such.

Q. Did he say for what purpose he was going to run the property?

A. I think it was to pay up the debts. It was either during the latter part of '67 or the fore part of '68 that I first saw Cunningham and George J. Robinson together; I think it was along in January. Oliver was not at Ossineke at that time.

Q. Are you able to say whether Cunningham brought any money from Oliver to Robinson at that time; and, if so, how much?

A. I think he brought eight hundred dollars up then.

By Mr. DUFFIELD:

Q. Do you know of your own knowledge he did?

A. I didn't see Cunningham pay the money to Robinson, but I know that he brought money there; I understood so, and I had some of the money.

Q. State why the money was sent—for what purpose?

2961 A. I think it was sent over to pay taxes or to procure an insurance on the mill; I am not certain which.

Q. Did any of it come into your hands?

A. Yes, sir; George S. Robinson gave me $400—sent me to Harrisville.

By Mr. DUFFIELD:

Q. Do you know whether this money came from Oliver or not?

A. Yes, sir; I know it came from Oliver, for I heard Mr. Robinson say so. I think Mr. Oliver sent a letter by Mr. Cunningham at the same time, but I am not certain about that. We had run short of pork, oats, etc., and Mr. Robinson sent me down to Harrisville to buy some pork and some oats if I could get any. He gave me $400 and I invested it all in pork. At the time Cunningham took the transfer of Oliver's property I saw Cunningham and George J. Robinson together a number of times. I couldn't say what they were talking about. It was the morning of the 3d of September that I met Hawkins and Cunningham at Alpena. The way I know the date this last spring when my brother-in-law's wife was cleaning house, overhauling trunks and things; they found a letter I had written to them on the 4th of September, 1868. Mr. Oliver had been out to my house prior to that, also Mr. Cunningham had been there. I had given an affidavit to Mr. Oliver about the time, and then afterwards Mr. Cunningham called on me when I was in Jackson one day and presented the papers to me, and

2962 wanted to know if I had given such an affidavit, stating such a time. I told him I had. He presented these papers that I had taken the acknowledgment of, and wanted to know if I had filled out the blank of the acknowledgment. I looked at them, and told him I did not. He then wanted an affidavit showing that I was not certain about that being the regular day I made affidavit; that it was on or about that time. I could not be certain about that being the day on account of my not filling out the blank. Then this spring, when my brother-in-law's wife was looking over the trunks and things, they came across a letter I wrote to them in the fall of '68; it was on the 4th day of September at Ossineke. It states the fact that I met Cunningham and Hawkins the day before, which would be the 3d of September, at Alpena.

Objected to, unless the letter is produced.

My brother-in-law, living in the town of Summit, Jackson county, Michigan, has the letter. I presume I can produce it.

(The witness is instructed by Mr. Russell to procure the letter, and forward it by mail to Flowers & Nichols.)

WITNESS: So far as I know, the letter was correctly dated. I dated it the same as I would any letter or paper writing to a person. I think that a man cannot leave Buffalo on the second day of September and arrive at Alpena on the morning of the third.

Q. What conversation took place between you and Cunningham in regard to your leaving and in regard to a certain note at that time?

2963 A. I asked Mr. Cunningham to sign a note that I held against Mr. Oliver for work, and he said he couldn't do it. I wanted him to sign the note with Oliver. I held the note against Oliver, and I wanted his name, too, seeing that they had made these transfers.

Objected to as irrelevant.

He refused; stated that he could not. He thought, however, that it would be all right.

Q. Give the whole conversation.

A. I wanted money, and I told him if I could have four hundred dollars by the 1st of April succeeding that time I would be willing to work there; if not I should go away within a month of that time or thereabouts. The reply was that he would leave that all to Mr. George Robinson. That was in the fore part of September, and I quit, I think, about the 20th of October. I didn't go away quite so soon as the 20th. After Cunningham was there Hawkins acted as agent.

Q. Under the arrangement made when Cunningham was there was any one to run the property with Cunningham?

A. Mr. George J. Robinson.

Mr. DUFFIELD: I object to any evidence of any arrangement, unless it appears whether it was in writing.

Q. From whom or how did you know that?

A. I know by their talking; that is, Mr. Oliver, Mr. Cunningham, and Mr. Hawkins. I don't know that I ever heard Mr. Robinson say that he was going to run with him; I couldn't say that he said so.

2964 Q. After that how was the property run?

A. It is a pretty hard matter for me to tell.

Q. Was it run by somebody?

A. Yes sir; it was run. The business went on the same until I went away; that is, they sawed lumber the same; I think it was about a month and a half after Cunningham came there that I went away. After he came, I continued to act as book-keeper until I went away.

Q. Can you tell how papers were made out, bills, shipments, accounts, receipts, and all the various papers used in a business of that nature?

A. I don't remember giving any receipts or requiring any of anybody; consequently that part was not called to my attention. I

didn't know hardly what name to assign to the firm. I think I used the same name I had all the while—Oliver & Robinson. I did not receive any instructions as to what name I should use for the firm. I did not receive any instructions from Geo. J. Robinson in regard to the name of the firm; did not receive any instructions from him in regard to the mode of conducting the business after Cunningham was there.

Q. Did Geo. J. Robinson make any alterations or difference in the business after Cunningham was there, or give any instructions?

A. I saw a paper in Geo. J. Robinson's handwriting, that Mr. Melville had. (Objected to unless the paper is produced.) I do not know where that paper is. Robinson also wrote in the books, after Cunningham and Oliver went away, that he would retire
2965 from the firm, and made some reference to the articles of copartnership.

Mr. DUFFIELD: I object to any memorandum or anything on the books, unless the books are produced.

WITNESS: I do not know where the books are: they were left in the office at Ossineke; I have no business with them.. I don't think I could tell when Cunningham and Robinson commenced to act together in running the business. I went away from there, and had no more to do with it. I could not say when Cunningham came up there after he had gone below, or anything about it; I never saw Mr. Cunningham after they had made the transfers and gone off; that was the last I saw of him there.

Q. Do you know why Cunningham went below immediately?

A. To make some arrangements in regard to matters below; I could not say what. I did not hear Cunningham say anything about why he went below, nor did I hear Robinson say.

Cross-examined by Mr. DUFFIELD:

Q. That note you spoke about of Mr. Oliver's; has it been paid to you ever?

A. No, sir. He has promised to pay it to me, but not recently; it was something over a year ago that he last promised to pay me.

Q. Did he say if you would come here and testify he would pay it, or any part of it?

A. No, sir. I don't know where that money came from
2966 that I said Robinson brought up, only that it was his son's money. I don't know where they took it from. Henry M. Robinson did not direct all the entries to be made on the books. He directed where I should give his son George credit for two thousand dollars; that, he said, was his own money.

Q. Did he give any directions about the entries to be made on the books besides that?

A. Not that I can specify.

Q. You say he assumed control after June, '68, of the business; how did he assume control?

A. By giving orders to the men and causing them to be discharged; going around as any man would.

Q. Did he assume control to the exclusion of all others connected with the business?

A. Mr. Melville assumed *to word*, as he did always.

Q. Didn't George Robinson also assume control?

A. When he was there.

Q. Then all of them, H. M. Robinson, George Robinson, and Melville, were all exercising control.

A. Yes, sir; I looked upon H. M. Robinson as superior to Mr. Melville.

Q. Was he superior to George J. Robinson?

A. I used to think he was the man, really; yet it was in the name of George Robinson. These are my honest convictions, what I have thought.

Q. This credit of six thousand dollars, that you say appeared upon the books in favor of Oliver, was in some manner afterward cancelled by advances made or notes given by George J. Robinson, with which Oliver was to be charged; is that what I understand you to say?

2967 A. I stated before that there was a balance of something over six thousand dollars coming to Mr. Oliver. I couldn't say how much. Afterwards I said that there was six thousand dollars of this balance reduced by means, I think it was, of notes given—something of that sort.

Q. Do you know particularly how that was done?

A. No, sir; I can't say. I presume I knew at the time, but can't remember it now so as to particularize. I think those notes were given by George J. Robinson. I do not pretend to say that it was on the third of September that I took that acknowledgment.

Q. Will you state under what circumstances you gave that first affidavit?

A. Mr. Oliver came to my house to see me about what time the acknowledgment was taken, and I told him I couldn't remember exactly; that is, I had no memorandum by which I could go, but I would write to the register of deeds and see what day I did take the acknowledgment. At that time, when I filled out the affidavit, I never once thought but what I filled out the blank in it. Consequently I relied upon that as being the real day that I took the acknowledgment. I wrote to the register.

Q. You got the date of the third?

A. Yes, sir; as it appeared there.

Q. You speak about Cunningham installing Hawkins there as his agent; do you know whether he gave him any paper or authority as such agent?

2968 A. I never saw him give him any paper, but remember his conversation there to Mr. Reed and me. At the request of Mr. Hawkins, after this paper was read, he appointed him as his agent, to act for him during his absence. Mr. Hawkins stayed until after Mr. Oliver and Mr. Cunningham went below, somewhere about one week, I think, or thereabouts. I don't remember exactly the time. He did not come back again while I was there.

Q. What did he do during that week?

A. He went into the woods; took another gentleman with him by the name of Samuel Elsworth to look where they would conduct their operations the coming winter. Mr. Robinson had gone below when Mr. Hawkins came out of the woods. Before George J. Robinson went below he came into the office and gave me a letter requesting me to hand it to Mr. Hawkins. Mr. Hawkins took the letter, read it and looked at it, and started below the next morning, I think—am pretty sure it was the next morning—and he never came back while I was there. That is all that transpired. That is all that had a chance to transpire while I was there; that is, while Mr. Hawkins was there.

Q. Do you know of your own knowledge where this eight hundred dollars that Cunningham paid to George J. Robinson came from?

A. I know where it came from, from what George Robinson told me. That is the way I know it. That is my evidence. Mr. Cunningham was not up there while I was there after the transfers. I never heard Oliver say anything about what the object of the transfer was.

2969 Q. Did he never tell you he was going to sell that property, or get Cunningham to sell it for him—his interest in it?

A. No. sir.

Q. Anything of that sort; that he had conveyed it to him to see if he could sell it; anything of that kind?

A. No, sir.

Q. Did Cunningham ever tell you that?

A. No, sir. I never heard in any way that that was the object of the transfer. I don't know that that was the object.

Q. You don't know anything about it?

A. No, sir. Not about that being the object of it.

Redirect examination:

Q. Do you know anything about it except what you heard Cunningham say at the time he had you acknowledge the papers, which you have already sworn to?

A. That is all the conversation I had with Mr. Cunningham about it.

Q. What you have already sworn to?

A. Yes, sir.

Q. In regard to the reduction of the six thousand dollars balance, as directed by George J. Robinson, have you any means of knowing whether Oliver consented to that?

A. No, sir. I know Mr. Oliver did not like it. He says to me, "I am afraid he has done something wrong," as soon as I told him about the six thousand dollars that I was directed to debit him with, and that is all he said to me.

2970 Q. You entered the debit solely by instruction of Geo. J. Robinson?

A. Yes, sir.

Q. That you had done something wrong, or he had?

A. It was Mr. Robinson I meant by using the word "he."

Recross-examination:

Q. Can you tell how you came to credit George J. Robinson with that amount?

A. I didn't credit George J. Robinson. Mr. Robinson wrote a letter to me—I think it was written to the firm, but there was some part of it directed to me what to do—to charge Mr. Oliver six thousand dollars.

Q. Did he specify how or why?

A. I think he did at the time, but I am not able to tell now what it was exactly.

Q. You can't recall the transaction?

A. Not to a certainty, but I think it was something about some contracts. I can't tell exactly what it was now.

By Mr. RUSSELL:

Q. Is there anything you wish to add about something else that transpired in regard to Mr. Hawkins?

A. After Mr. Cuningham had gone away Mr. Hawkins says to me: "There is a lot of timber on the dock here, and when they come to ship that they will not ship that in the same name;
2971 they will ship it in George's name or the old gentleman's; and if they order it to be shipped in those names, don't make out the bills of lading in that way; make them out as you have until the name is given of the firm.

By Mr. DUFFIELD:

Q. To make out all shipments in the old name until the new name was given?

A. Yes, sir; in the name of the firm. The reason why the name came up in that way we had got short of flour. I was going to write to a firm in Alpena, and I didn't know whether I ought to sign it in the name of Oliver & Robinson, or how to give the name of the firm.

Q. Did they ever ship any lumber in the name of Geo. J. or H. M. Robinson?

A. Yes, sir; it was after this transfer was made; if I am not mistaken, Mr. Robinson came into the office with a note for me from Melville, stating that I should make out the bill of lading as if shipped by George J. Robinson. Says I: "What is that for?" Says H. M. Robinson: "I don't know anything about it, only that is the order Mr. Melville sent here to you." "Well," says I, "I cannot do that; I will do it as I have always, and then their objections may come in afterwards." And I did so. Mr. H. M. Robinson and George Melville came across the captain, and wanted to see his bill of lading. He showed it to them, and they changed the bill of lading, and it went in some other name.

Q. How do you know what name it went in?

2972 A. From what Mr. Melville said; Mr. Melville was rather mad at me because I didn't do it; and I asked him what business it was to him anyhow.

Q. By Mr. RUSSELL: Was your own account with Oliver transferred to the books of Oliver and Robinson?

A. Yes, sir; just the same as all the rest of them.

Q. For how much?

A. I don't remember; my indebtedness was down there, but my credits I never put on any of my books, for the reason that I had a contract; whatever I got I debited myself with.

Q. Did George J. Robinson acknowledge or repudiate the transfer?

A. He repudiated the transfer, at the same time he repudiated all the rest, or soon after; he didn't repudiate mine as soon as some of the rest.

Q. How did he repudiate the transfers and at the same time offset them by notes, as you speak of?

A. When men would come to him and ask him for money he would not pay any of the balances that were coming to them from Mr. Oliver's books. He did not pay my balance. It left me in rather a bad position; all the debits I had from Mr. Oliver and the firm were likely to come out of what money I had earned since I had worked for the firm. I had no credit for what I had worked before the firm came in, consequently I had no credits transferred. It was all debits that were transferred against me.

Q. How did you fix it?

A. They (Geo. J. and H. M. Robinson) said they would not pay it, the old gentleman, particularly.

2973 Mr. DUFFIELD: I object to any testimony about his matters there with the parties.

Q. After they said they would not pay it, what?

A. Shortly after that, after court sat in Alpena, Mr. Robinson came in the store and said, "My son, have you settled with Mr. Oliver for that claim he owes you?" I said, "No, sir; it is in the book same as all the rest." "Well," says he, "they are going to put him in bankruptcy this court. If you want to get your pay you had better settle with him and get his notes right away." I expected some parties from below. As quick as I saw Mr. Oliver I told him I wanted his note.

Q. Is that the note that has been spoken of that is outstanding now?

A. Yes, sir.

Q. By Mr. DUFFIELD. Did Geo. J. Robinson repudiate those notes, and at the same time endeavor to offset balances by notes?

A. Yes, sir; I will tell you how he gave his authority to me: Says he, "I don't want you to pay any of these men what is coming to them in the books of David Oliver." As Mr. Robinson was going below in the spring, I spoke to him about it. I says, "I suppose you will pay me our matter, Melville and I, if you don't the rest of the boys."

Q. I ask you if he repudiated those balances, and at the same time offset them with notes given?

A. All the credits that were coming to Mr. Oliver, what they were,

were not repudiated, but if there were any debits they were always taken out; there was not a word said about credits.

2974 Q. The debits and credits were both alike repudiated?

A. No, sir. There was nothing said about the credits, no controversy about them—that is, so far as any orders to me.

(Signed) R. E. GALLUP.

THURSDAY, *August* 17*th*, 1871.

GEORGE W. HAWKINS, sworn:

I live in York State, Niagara county, town of Royalton, about 26 miles from Buffalo. I know all the parties to this suit. I live about five miles from Mr. Hunt and about seven from Eschleman.

Q. What is Eschleman's business?

A. Farming, principally. I first saw Eschleman about 11 years ago.

Q. What is Hunt's business?

A. Farming, as a general thing. It is a hard matter to say, because he has so many irons in the fire.

Q. How long have you known Henry S. Cunningham?

[A.] About three years—that nearly. I believe he is at present a lumber dealer in Buffalo. I first knew Cunningham in Erie county, town of Clarence.

2975 Q. Is Eschleman any relation to Hunt?

A. I can't say. Cunningham is Eschleman's son-in-law.

Q. Is Hunt and Eschleman connected in business, to your knowledge, or any enterprise of any other kind?

A. They have dealt in buying and selling lands—that is, selling off lands together, and holding lands together.

In the fall of '66–'67 I lived in Niagara county, York State.

Q. Were you employed in rny particular business that winter?

A. I went up here to Michigan, I think, to lumber that winter—to Ossineke. I had been there once before, I think, in 1864. I think it is about 12 years since I first saw Mr. Oliver.

Q. In the winter of 1866–'67 did you make any mortgage to any person connected with this matter?

Mr Duffield objects to any testimony of this sort as irrelevant.

A. Yes, sir.

Q. Describe what contracts you made—what mortgages you gave.

A. We made a contract to Calvin Haines, of Lockport, and gave a mortgage.

Q. What was the contract about?

A. It was a contract to deliver a certain amount of lumber, for the advances.

Q. What lands did you mortgage?

A. We mortgaged lands in Niagara and Erie counties, York State. Mr. Oliver mortgaged lands in Michigan, Alpena county.

2976 Q. Were you the party of the first part?

A. Mr. Oliver was the party of the first part.

Q. You made them as his agent?

A. I went there with him, and Haines said if I was amind to go

mortgage my property there he would advance the money, and we done so, and I went up with Mr. Oliver to lumber that winter.

Q. Were your mortgages in the nature of indemnity mortgages?

Mr. Duffield objects to any testimony as to the character of the mortgages. They ought to be produced here, or certified copies of them.

Q. If I understand you correctly, you guaranteed the performance of these contracts and secured the performance by your mortgages?

A. Yes, sir.

Q. Who was with you in business in '66–'7?

A. There was David Oliver and Robert Oliver, a brother to Mr. Oliver.

Q. Where was you in with them?

A. Devil river, Alpena county, Michigan.

Q. How long had you been acquainted with the business of lumbering?

A. I had lumbered one winter before in pine lumber; I had always lumbered in oak before.

Q. How many logs were cut and hauled during the season of '56–'7?

A. I think when I went away it was two millions we had in.

Q. What was stumpage worth then?

2977 A. That would depend upon the quality and where it was; they were selling up there at from 20 shillings to $3.50.

Q. Did you look the Devil river property over that season for the purpose of estimating the timber?

A. Yes, sir.

Q. How many acres did you examine in towns. 28–'9?

A. Probably we went over some 8,000 or 9,000 acres of it; his brother and me went together.

Q. When did you first know the Robinsons—H. M. and George J.?

A. I think it was in the fall of '67.

Q. Where?

A. I saw those gentlemen here in the fall, and I saw George up there at Alpena county.

Q. Did you go to Ossineke in the spring of 1868?

A. Yes, sir; I was going to look at some pine land on the peninsula for Mr. Oliver and myself.

Q. What time did you get to Ossineke?

A. I think about the 10th of June.

Q. What did you go to doing then?

A. I went to work for Oliver & Robinson; I expect Oliver & Robinson were the proprietors of the Devil river property; at that time George Melville, old Mr. Robinson, and H. M. took charge of the business.

Q. Was Oliver at that time engaged actively in the business or exercising any control over it?

A. He was, but he didn't have anything to say much; there wasn't much use of his saying anything, because the men were instructed

not to obey him; that if they did they had got to look to him for their pay.

Objected to as hearsay testimony.

2978 Q. State why they would not obey him, and who instructed them not to obey him?

A. George Melville and Mr. Robinson, the old gentleman, told the men if they worked for Oliver they must look to him for their pay, for the company would not pay them.

Q. What company?

A. His son, the old man, and Oliver; they would not get it out of the company's means.

Q. Did the Robinsons ever make any offer to buy the property of Oliver, to your knowledge, through you or any other person?

Objected to as irrelevant.

A. Yes, sir. The offer was that they would pay him $10,000 and pay the indebtedness and take the property.

Q. By Mr. DUFFIELD: Who made the offer?

A. H. M. That was along about June, 1868.

Q. Who did they authorize to make that offer?

A. They wanted I should and George Melville.

Q. Did you make the offer for them?

A. Yes, sir; in June, 1868. The offer was not accepted.

Q. Was there any proposition made when Oliver refused this?

A. Yes. H. M. Robinson said he would like to have us hire the mill of him and buy the stumpage of Oliver, and to give him $5,000 a year for the privilege—teams, tools, and mill—and then to give him $2.50 or $3.00 a thousand stumpage. By us I mean George Melville and I. He wanted Oliver to go off and go to sleep; that was the remark he made.

2979 Q. Do you mean he wanted you and Melville to step into Oliver's shoes?

A. Yes, sir. Robinson then wanted I should go below and settle Haines'; that the sooner they closed the mortgage the better it would be for them, and to tell Cunningham and Hunt that he was sorry he promised them $10,000 that fall, and they must not expect a dollar of it from him; that there was their property. H. M. said that.

Objection raised by Mr. Duffield to all that H. M. Robinson said about it.

Q. Who had control and management of the property at the time H. M. Robinson said this?

A. H. M. Robinson was up there and controlled it, and the men obeyed him. He was in possessisn and building a house for the men and managing the property. He hired me and paid me. I followed his instructions and went below and saw all the mortgages; I saw Calvin Haines and Ranney at Lockport, and I went over and saw Hunt, and went from there to Buffalo and saw Cunningham and *the* G. R. Haines at Buffalo.

Q. What did Haines and Ranney say about it?

Objected to as irrelevant.

A. They didnt say much. Haines said they should come to Buffalo and see the brother. Cunningham said he put confidence in it and expected the money; and says, "Tell Eschleman I am just as sure of the money as if I had it. I think they will work it out and get it." Hunt remarked it was about as he expected. I didn't see Eschleman. After seeing these parties I went back to Ossi-
2980 neke. I got there, I think, the last of June, 1868. I then told H. M. Robinson that the Haineses were coming up there. Philip Ranney, Emeret Haines, and his son came up after my return.

Q. What did they do after they got there?

A. Emeret Haines went up and looked the logs over, and talked some of buying. Phillip Ranney went off and talked with George Robinson. I don't know that they came to any conclusion before they left. After we got to York State we got to Haines', and from there hired a carriage and went to Hunt's. Oliver and myself went with them from Ossineke. Emeret Haines, his brother, and son went out to Hunt's. I don't know the son's name. Philip Ranney, Calvin Haines, and Oliver and myself also went to Hunts. We got there, I believe, about two o'clock in the day, some time in July. I can't tell the day of the month—July, 1868.

Q. What agreement, if any, was made on the part of Hunt, Haines & Ranney?

Objected to, unless it was not in writing.

WITNESS: It was not in writing. Haines and Ranney and those talked over that they would pay Oliver $10,000 when the deeds were made, and so on. Calvin Haines and E. and G. R. Haines made this offer, and they were to pay all the debts against the property and against the firm of Oliver & Robinson. Hunt was present and advised Oliver to take it.

Q. Did Hunt make any agreement in regard to his own mortgage?

A. Not that I heard of.

Q. What was said about the Cunningham, Hunt & Eschleman mortgage at that meeting?

2981 A. I don't know as there was any conversation took place, only they were to pay it—the party that bought the land—the Haineses. There was no written contract made then, but there was afterwards, at Calvin Haines', at Lockport. I think it was the next day. It was either the next day or the next day after. Philip Ranney, Calvin Haines, Geo. J. Robinson, and, I think, one of the Haineses from Buffalo was there. I won't be positive, but I know the others were there.

Q. Was there any contract made and signed at that time?

A. Yes, sir; Mr. Oliver and Mr. Haines signed it. I don't know what became of the contract. I believe they had until the 5th of September to perform that contract in.

Q. Who came to Alpena before the expiration of that contract?

A. Cunningham and myself. Cunningham and I left Buffalo by rail somewhere the 1st of September on the evening train. We left the rail at Bay City and took the Huron. I have seen Mr.

Major, the clerk of the boat, in passing up and down. I don't know him. Cunningham and I traveled in company.

Q. What was the object you and Cunningham had in going to Alpena at that time?

Objected as irrelevant.

A. Mr. Cunningham calculated to be appointed receiver, and I went up with him; and after he calculated to be appointed up there, then he was going to put me in charge of the property and to look to see about where the mill sat.

2982 Q. Before you and Cunningham left Buffalo, when Cunningham went to be appointed receiver, can you tell with whom Cunningham talked or advised in regard to the receivership?

A. I think Oliver had been down a spell before that. I don't know. I didn't see any one. I don't know whether Cunningham had any interview with Hunt & Eschleman about the receivership. I can't say. Cunningham met me at Suspension Bridge that night. I didn't go clear to Buffalo; I went to Suspension Bridge and took another train; we met there.

Q. Had you seen him before since the contract was made at Calvin Haines'?

A. Yes, sir; at Buffalo.

Q. Do you know whether in that interview he and Hunt and Eschleman had any conferences?

A. I can't say; I don't know.

Q. Do you know whether there had been any interview between him, Cunningham, and the other mortgage creditors before he started to take this receivership?

A. No, I don't. I never heard any of the mortgage creditors say anything about that. When we got back of Ossineke Cunningham went to finding out if the mill stood on the fractional section; we went down, and Oliver and Cunningham, and found that it stood on the fractional section adjoining—standing on land that was mortgaged to Hunt, Eschleman & Cunningham. Found the mill was not covered by their mortgage. This is the steam mill. After that Mr. Oliver and Mr. Cunningham walked up the railroad talking,

2983 and Cunningham and Oliver went into Oliver's room and talked. What they talked I can't say. Oliver came out afterwards and told me what he proposed to do. Oliver told me that he proposed putting in all the inside property and outside property. What he meant was in towns. 28 and 29, and any Alpena property, and so on, in Cunningham's hands. Cunningham agreed to take the property, pay all the debts and incumbrances, and afterwards deed the property back to Oliver, provided I would take a one-quarter interest and stay there and help manufacture and ship the lumber to Buffalo. Cunningham would sell and pay off the debts as fast as possible, and after the property was all paid off he would deed it back to Oliver, and Oliver made arrangements with me to let me have a one-quarter interest under them grounds. I told Cunningham what was said, and he never objected. The papers were made in Oliver's room. Oliver went right off to make them. He

was a couple of days making them—the deeds. The deeds were of his interest in that land as well as property, and lands at Alpena that he held with David Preston.

Q. From whom to whom?

A. To Mr. Cunningham.

Q. Were you present when they were signed?

A. Yes, sir.

Q. State what Cunningham said at that time when he received his deed in regard to the agency, and in regard to the object of the transfer?

A. He called Joseph Reed, Reuben Gallup, an agent of Oliver (they were sitting in the room); wanted them to witness the deeds, and turned to them and told them that he had bought Oli-
2984 ver's interest in that property, and he appointed me and left me there in his stead to act for him in his absence and to take charge of the property. Afterwards I asked him what he thought I had better go to doing first.

Q. What did he say in regard to what he took the property for, and what he was going to do with it—before or after?

A. He never came out and told me what he intended to do with it; nothing, only I told him what Oliver said, and so forth, and he never objected to anything but what it was so; he did not pay anything for the property.

Q. What instructions did he give you in regard to the agency?

A. I asked him what he thought I had better do first; and he said that I better take some good man in with me, and go in the woods, and look over the pine; especially the Preston lands, and see what was the best place to lumber during the coming winter; I built the shanties and hunted out the roads to draw logs on; he stated that he was going below to see and have arrangements made with those parties that held those mortgages before they made any extra cost or trouble; I expect it was to have them wait—to put them off; he was going below to make an arrangement with those that held the mortgages—Haines.

Q. How long, after that, did Cunningham remain?

A. He went right away that afternoon; I took a man and went into the woods; was gone I think five days; looked over the Preston land, looked out a place for the shanty and a place for the road, and also, where we would have to put a boom in, and then came out; Samuel Ellsworth went with me.

2985 Q. What did you do then?

A. Mr. Robinson had left a letter there, and wanted I should not take charge of anything or have nothing to say at all, until I went below and saw Cunningham.

Q. Which Robinson left the letter?

A. George J.; he had gone away before he left the letter.

Q. Is that the letter?

A. Yes, sir.

Letter marked Exhibit "A."

(WITNESS:) After getting that letter, I went to Buffalo to see Mr.

Cunningham; I went because Melville and Robinson told the men they must not do anything I told them—that is the reason I wanted to see Cunningham; when I saw him, he said he was sorry I had come down yet, that he had telegraphed to Oliver to come down; that it was a hard matter to raise the money to buy the supplies and to carry on the business; and he had telegraphed to Oliver to come down; when Oliver came down, all the mortgagees met at Buffalo—Calvin, Haines, and Ranney, E. and G. R. Haines, Hunt, Eschleman, and Cunningham, and me and Oliver; in the first place we met at Cunningham's office.

Q. Whereabouts in Buffalo was that?

A. On Main street, I forgot the number; he was the Indian agent, and had an office on Main street—he and Mr. Nerbury; this meeting took place the last of September, I think; I can't tell exactly.

2986 Q. When you and Cunningham were at Ossineke at the time Cunningham took the transfer; what, if anything, did he say in regard to Hunt or Eschleman, in respect to this receivership?

A. He was talking in the office with Reuben Gallup and me, and he said there he would not undertake to take hold of property if he didn't know his backers. He didn't call any names. Mr. Gallup was talking to me that day about some back pay the company owed him and about his wages. He didn't say who his backers were. At this meeting at Cunningham's office they talked about buying the property and tools, agreed to give Oliver a certain length of time to find a purchaser, and they would then go to getting supplies, and Cunningham would sell it to them. They went up to G. B. Williams' office, I think it is, on Main street, to reduce it to writing. Hunt, Eschleman, Cunningham, E. and G. R. Harris, the two Robinsons, Philip Ranney, and Calvin Haines—all went up, and Oliver and I. We went direct from Cunningham's office, and got to Williams' office right after dinner, I think it was. The meeting begun at Cunningham's office I guess about 11 o'clock in the morning. After we got to Williams' office they talked about it, and Mr. Williams commenced writing down about what they agreed to. Mr. Cunningham acted as chief spokesman with Williams.

Q. How long did that process continue?

A. Oliver and I stayed there until about 5 o'clock; then we had to go away.

Q. What did you have to go away for?

A. Mr. Oliver had to go up to Painted Post, and had to take the train, and I went up with him. Neither of us returned. We were not present at any other meeting in Buffalo after that; that is, we were not together.

2987 Q. At this conference between Hunt, Eschleman, Cunningham and the other parties at Cunningham's office, state what the agreement was in regard to the payment of the Cunningham, Hunt, and Eschleman mortgage. State whether they came to any agreement in regard to what should be done at Cunningham's office in the morning.

A. Yes, sir.

Q. What was the agreement in regard to the mortgages, and especially in regard to the Cunningham, Hunt, and Eschleman mortgages?

A. They were to pay the Cunningham, Hunt, and Eschleman mortgage, the parties purchasing—the Robinsons, Calvin Haines, and Philip Ranny.

Q. State whether Cunningham, Hunt, or Eschleman, or either of them, agreed to that.

A. They were both there, and all talked it over. I suppose they all consented to that.

Q. Was that the distinct agreement at this Cunningham meeting on the part of the purchasers and of the mortgagees?

Objected to.

Q. What was the agreement upon the part of Cunningham, Hunt, and Eschleman as to who should pay their mortgage?

A. I didn't hear them say "I will take you for pay," but they were there, and helped make the bargains and everything, and thought it was the best thing Oliver could do.

2988 Q. Was there any agreement in regard to the time when the mortgages should be paid off, at this conversation?

Objected to any testimony as to the conversation. The contract is the best evidence.

Q. How soon were the Dyers, Robinson, Haines, and Ranney to pay the mortgage on the property, according to the agreement at Cunningham's office, when Oliver was present?

Objected to as above.

Q. Within what time; how many months, days, or years?

A. Thirty days Oliver had to deliver, if Dyer would pay for the supplies, etc., what money they had paid out and spent; pay them their money, then the property should be Oliver's; pay the money to the mortgagees, then they were to have a deed, and they were to pay the Hunt and Eschleman mortgage.

Q. Who?

Objection made as to the contents of that agreement.

Q. State what these stipulations were.

A. They were to pay the debts in 30 days, or to have it settled; and then they were to have a deed of the property; they agreed to pay the Hunt & Eschleman mortgage, a mortgage to Preston, a mortgage to Wing, and a mortgage to Mr. Hill, of Saginaw; and they were to pay the E. & G. R. mortgage; and they were to release my mortgages; they were to release all incumbrances held against Oliver; they were to release mine in 20 days; they never released them.

2989 Q. When were they to pay the other mortgages, including the Cunningham & Eschleman mortgage?

A. They were to do something with them in 30 days, I think; at the meeting at Cunningham's office I didn't hear of any conveyance having been made from Oliver to Cunningham.

Q. Do you know whether the parties who were present there knew that?

A. They all knew it; I never saw the agreement; when I saw Oliver on Thanksgiving Day he told me that they had not released my property or anything; and says I, "I would like to have a copy of that agreement;" and says he, "They won't let me have a copy of it, and won't let me read it, and it ain't at all as we talked."

Objection made to any testimony as to what Oliver said about it.

Q. By this agreement at Cunningham's office, what were the purchasers to do in regard to the liabilities of the firm of Oliver & Robinson?

A. They were to take it and pay those debts; anything Oliver & Robinson had contracted; they were to take the supplies and things they had on hand; according to that agreement, as made in Cunningham's office, Cunningham was to convey to the purchasers in thirty days from that time, on the conditions that they were to assume all those mortgages.

Objected to.

Q. What do you mean; paying them?

A. Paying them or taking care of them.

Q. On your mortgages?

2990 A. Yes, sir; and the liabilities of Oliver & Robinson. I have applied to Calvin Haines and Ranney for the cancellation and release of my mortgages.

Q. What was actually done in regard to the management and running of this property, to your knowledge, after this meeting at Williams' office? What was the first you knew of it?

A. I never knew much about it since; I have never been there since.

Q. Do you know from the statement of any of the parties to Cunningham or Haines, or any of the rest of them, what has been done with it?

A. Calvin Haines told me at Lockport that they were running it, and making out of it what they could; he told me that last week—August 12th, '71; he mentioned no names as to who was running it then.

Q. Under the agreement made at Ossineke, about the 1st of September, what was Cunningham to do with one-fourth of the property when the debts were paid?

A. Deed it to me. I was to pay $35,000 for it. I think I was familiar with the value of that property at that time; I had looked it over some with reference to purchasing; been in there with other parties in the woods, and knew what there was of it. I think it was worth that at that time. The agreement between Oliver and I to pay this $35,000 was only verbal; there were no writings made. The agreement between Cunningham and I, that he should deed me one-fourth of the property was also verbal. I told him what Oliver had said, and he said that he had talked with George

J. Robinson and H. M. Robinson, and they had agreed to
2991 furnish the means to pay up the Wayne mortgage, and he thought I had better do it. And says he, "I told him that I was willing to put money in and stay here, and take hold of it and work it out; that the debts would soon be worked out." And he said he told the Robinsons he would not put a dollar in for Oliver to manage it. And he said the Robinsons consented, and he thought it was a good thing for me to take hold of. In regard to deeding me the one-quarter at the end there was nothing said, only he thought it would come out all right. That is the remark he made.

Q. What reason did Haines or any of those parties give you for not canceling and releasing your mortgage?

A. Mr. Haines looked for the mortgage, and said it might as well be canceled one time as another; and Phillip Ranney says, "We let Hunt have it at the meeting at Tonawanda." Says he "I will get it when I go to Buffalo." This was a little more than thirty days after the meeting at Buffalo that I asked him. I don't know whether these purchasers ever discharged any of the liabilities of Oliver & Robinson. Some time, about the last of July, I think it was, of 1869, Hunt and Eschleman came to see me about the mortgages. They came together to my place in the town of Royalton, Niagara county. Hunt said it was all right, and I never should be harmed, but they could not release it; if they did it would release claims they had against Oliver's property. They could not release particular ones without releasing the whole, but it would be all right. Eschleman didn't appear to say anything. He was present when Hunt did this talking to me; stood right beside him.

Q. Have you ever heard Cunningham say anything in regard to Oliver's property in his hands since?

2992 A. Yes, sir. On Thanksgiving Day of 1868 Mr. Oliver had sold some land—I think some of the Preston lands; it was some of his outside land—and Mr. Oliver wanted Cunningham to deed it, and Mr. Cunningham said there was about $15,000 worth of property in his hands that belonged to Oliver; I heard Cunningham say this. I don't know anything about this meeting at Tonawanda except what Philip Ranney said. He said it was to organize a company to get money to get supplies to run the concern with.

Q. For what purpose?

A. To manufacture lumber at Devil river, I suppose. This meeting at Tonawanda was about 30 days after they had met at Buffalo, at Cunningham's. I don't know what time they met there, but it was after the 30 days were out. I was there at Haines', and inquired about the mortgages—who got them? They said they left them at Tonawanda, at Mr. Hunt's—let him have them—my mortgages. I asked him who was interested in the organization, and he said Hunt & Eschleman. Cunningham and H. M. Robinson was there. I asked him—says I: "You could not get Eschleman into it to manufacture lumber, could you?" And he said he had as much to say up there as any of the boys.

Q. What about Cunningham?

A. I didn't hear him say.

Q. Do you know, except from the statements of Ranney, who entered into that organization?

A. I didn't; I never heard Cunningham say when he became a member of it.

2993 Q. Go back for a moment to the agreement at Ossineke, when you was talking with Cunningham, as you stated, in regard to the running of the property and paying off the debts. State what was said in regard to whether they should be paid off. State whether anything was said when the Hunt & Eschleman mortgage was to be paid.

A. I never heard him say; and I never heard Oliver, in his presence, say anything about it.

Q. Did you hear Hunt, Cunningham, or Eschleman say anything in regard to waiting for the property if the interest was paid?

A. I heard Hunt tell Oliver once when we were there.

Objection made to any testimony on that point.

Q. Can you give the year or month?

A. It was in July, 1868. Hunt said that Oliver could make arrangements with the Haineses, and raise the money in any way. Says he: "As long as we are secure and have the interest, that is all we ask." Mr. Hunt and Mr. Eschleman are men of abundance of means.

Q. By this agreement at Cunningham's office, what was to be done with the property outside of towns. 28 and 29?

A. They were to pay Preston, and the Preston land was to be deeded to me. The other land was to be deeded back to Oliver—the other outside lands.

Q. Who was to pay Preston?

A. The purchasers; the company that bought.

Q. Do you know whether they ever did pay Preston?

A. Mr. Hunt told me they did not raise the money and pay Preston; the Haineses didn't raise the money, and they had to raise the money and take the land themselves.

2994 Q. Who had to pay it?

A. I suppose it was Hunt, Cunningham, and Eschleman, but I talked with Eschleman about it afterwards, and he says he didn't, but it wasn't deeded to me, so that it must have been him and Cunningham; but he told me; says he, "When the Haineses commence paying for the land it will be all right." Says I, "They have never paid a cent on it as they agreed."

Q. Have the purchasers under the Buffalo agreement ever deeded you the Preston lands?

A. No, sir.

Q. Ever deeded to Oliver the balance of the outside lands to your knowledge?

A. Not that I know of. Nothing; only 1,000 acres. I presume rather one-half the 2,000; on Thanksgiving after that, that I came

down, that Cunningham let me have—I think it was a thousand acres.

Q. Can you name any single one of these different stipulations in this agreement at Cunningham's office which has been performed by the purchasers?

A. No, sir; not that I know of.

Q. You don't know that they have performed any of them?

A. No, sir.

Cross-examined by Mr. DUFFIELD:

I am a brother-in-law to Mr. Oliver. I have unsettled matters with Mr. Oliver. I don't know exactly how much he is indebted to me; it is somewhere in the vicinity of $1,000; I think it is not $2,000.

Q. Has he said anything to you about paying this $1,000 out of what he expected to realize in this suit?

2995 A. No, sir; he has not made any promise to me as to its payment in connection with the giving of my testimony. I believe I am the Mr. Hawkins who made an affidavit in this case before James Sheldon, United States commissioner, on the 15th February, in the city of Buffalo.

Q. Do you swear positive to the day when you left Suspension Bridge for Ossineke in company with Cunningham—the day of the month in 1868?

A. I can't. I can't swear, either, to the day I arrived at Ossineke with him.

Q. Can you swear positive to the day when the papers were executed?

A. I could not.

Q. Can you say whether they were recorded on the same day on which they were executed?

A. I don't —.

Q. Do you know whether you went, on the Sunday preceding the day when they were executed, into the woods for huckleberries, or on the Monday preceding their execution, with Mr. Cunningham?

A. Mr. Cunningham and me were off huckleberrying; I think it was Monday.

Q. Was that the day before they were executed, or the day after?

A. It was the day before.

Q. Do you know whether it rained on the Sunday?

A. It rained on the Sunday. I didn't go out on the Sunday. Robinson and Cunningham went out and George B. Melville.

2996 Q. How many days were you there before that Sunday; whether you arrived the day before, or the day before that? How many days had you been there before you went out huckleberrying?

A. I think we got there Friday, just at dinner time; rather guess I went huckleberrying two days. I think I went Saturday and then on Monday. Cunningham went with me Monday. I went out with Mrs. Oliver on Saturday, and with a man we had to drive the team. We had to drive out four miles. I forget what the man's name is; he is a hostler there.

Q. Did you see the papers delivered into the register's office?

A. I did not. I don't know the day when they were delivered in.

Q. Were you with Oliver and Cunningham when they left Alpena?

A. I was not. I started to go into the woods the night they left Ossineke.

Q. At this meeting in Williams' office, where you say Williams wrote down what was agreed to between the parties, had he got through with his minutes before you left?

A. I think he had not. I know they did not us to leave.

Q. Had he done taking his memorandum for the agreement when you left, or did he read his memorandum over to you and to all the parties before you left?

A. I think he did.

Q. What was he doing when you left?

A. He was writing with a pencil.

2997 Q. Was he writing the agreement?

A. I think he was; yes, sir.

Q. Did he tell you when he would have it done if you would wait?

A. I didn't hear him say.

Q. Did you ever see the agreement afterwards?

A. No, sir.

Q. Ever hear it read afterwards?

A. I think this spring or winter Mr. Oliver had a copy—what he said was a copy—of it to my house.

Q. Did you not ask Williams about the substance of it, and did he not explain it to you?

A. He did not. I don't remember asking him. He read it like this: He would write off a sheet, and when he got through writing it with the pencil he would read it, and then he gave it to his clerk to go and copy. That is the way it was read, what there was of it.

Q. Had he got through doing that when you left?

A. No, sir; he was writing, I think, when we left. They were all talking. I won't be sure whether he was writing or not when I left.

Q. Did George J. Robinson have any proprietorship or charge of that business on the 10th of June, 1868, at Ossineke?

A. I expect he did.

Q. Are you sure you went up on the Huron steamer with Cunningham?

A. Yes, sir.

Q. What makes you sure?

A. It was the first time Cunningham ever went from Sag-

2998 inaw to Bay City. I told him, says I: Let's change cars here, because the Huron has changed, and we have got to get to Bay City to get on it, or we will lose it." Says he: "No, we can get it at Saginaw." Says I: "No, we have got to hurry and get on the cars, so as to get to Bay City to take the Huron now."

And we had just time to get on the cars to go to Bay City. We got there and hurried right down to the steamboat.

Q. You speak about this receivership—that Cunningham had talked about the receivership; what do you mean by the receivership; was it to take Oliver's interest and hold it against creditors that he had arranged for with Cunningham?

A. No, sir; what I understood was that it was to have the judge appoint a receiver to take charge of the property and pay off the debts of the property.

Q. Was there one appointed?

A. No, sir; there was not.

Q. Did you hear Oliver say at any time that the reason why he put this property into Cunningham's hands was to keep it from the claws of creditors?

A. No, sir.

Q. Anything of that sort?

A. No, sir; I did not; I have heard him say that he had property enough to pay all his debts, and more, too, and they should have it.

Q. Was he not largely indebted at that time?

A. Some eighty and some thousands, I think it was, we figured up; he told me his debts and we inventoried the property to see if he was worth anything or not; that is what we wanted to find out.

2999 Q. Do you not know that the purchasers under that agreement fulfilled the stipulations that were required of them so far as your mortgage was concerned?

A. Do you mean released it?

Q. Yes; as far as there was money to be paid.

A. They could not release my mortgage without my knowing it.

Q. Was there not some money to be paid and applied in the releasing of your mortgage?

A. They were to pay E. & G. R. Haines $4,000.

Q. On the payment of that, was not your mortgage to be released?

A. Yes; on the payment of that.

Q. Do you know whether they paid that $4,000?

A. I don't.

Q. Didn't Hunt and Eschleman tell you so at the time of this interview you refer to, when they said it would be all right, but they could not release it?

A. No, sir.

Q. Have you never heard that they had paid it?

A. I never have.

Q. Or that it had been paid?

A. No, sir.

Q. How came you, then, to ask for the release of your mortgages, when you knew that that money was paid?

A. There was two mortgages; E. and G. R. Haines has a mortgage, and the C. Haines, of Lockport, has a mortgage, and the Haines, of Buffalo, has a mortgage; there is separate mortgages.

Q. What I mean, at the time you demanded the release of your

mortgage, did you have reason to believe that that $4,000 had been paid, so that you could make a proper claim?

3000 A. I supposed they had paid it, for the 30 days were out; they didn't say whether they had paid it or had not, only they could have released their mortgage at any time. I didn't know whether they had paid it or not, nor they didn't say.

Q. Did you ever ask E. and G. R. Haines whether they had been paid that?

A. I have not. I asked them if they had released it; that was the same time they made the writings; I went down myself and asked them; the young man said: "Fetch on your $4,000 and we will release your property;" that was the time we were at Buffalo—the time we all met there; I never seen them to talk with them since.

Q. Then the time that you asked for the release of your mortgage was prior to the Buffalo agreement?

A. It was afterwards.

Q. Before, wasn't it?

A. The time I asked for the release of my mortgage was at Lockport; I asked for the release of my mortgage about 30 days after the Buffalo agreement.

Q. Was it full 30 days after or not?

A. I could not say, but it was somewhere about there; I think it was after, because I know they said they would have to take the property.

Q. Are you a surveyor?

A. I am not.

Q. What sort of a line was it you assumed to run in connection with the location of the mill?

A. We found the corner where Oliver told us, then set the compass round east (a little compass we carried in the woods with us.)

3001 Q. You run the lines and corners according to the courses as Oliver gave them to you?

A. Yes, sir.

Q. Did you ever speak with George J. Robinson about taking an interest in the copartnership there before the papers were executed by Mr. Oliver to Cunningham?

A. I did not; I did with H. M. Robinson; H. M. made offers to me and George Melville that if we could get Oliver out of it that he would take hold and help us.

Q. That was mere talk?

A. Yes, sir; I never told him what agreement I had made with Oliver; I didn't tell Mr. Robinson, I left that with Cunningham; he talked with him, and I supposed it was all satisfactory, from what he told me.

Q. You was present when this deed was executed; do you know whether it was recorded on the same day?

A. I don't.

Q. Do you know whether they went to have it recorded on the same day, to Alpena?

A. It seems as if they did, and it seems as if they did not, but if I was to guess at the thing, it seems as if they did go that night.

Q. For what reason were these Preston lands to be conveyed to you?

A. Mr. Oliver was going to have the selling of them, and he owed Joseph Reed and Reuben Gallup and myself; was to take our pay out of them, and he was to keep the balance for selling them, and that was their request, that they should be deeded to me.

Q. As a sort of trustee?

A. For their pay.

3002 Q. How much did that amount to altogether?

A. I forget now; I don't think it was as much as $5,000; I think Oliver owed $11,000 on the Preston lands at that time.

Q. Did he ever pay for them?

A. No, sir; they were to pay for them.

Q. Was there any agreement between Oliver and Mr. Cunningham as to this transfer, to your knowledge, in writing?

A. No, sir.

Q. Did you ever hear it stated over in its terms, between Oliver and Cunningham?

A. No; no more than I heard Oliver ask Cunningham: Says he, "There is one thing more we haven't done;" says he, "How much is your salary going to be?" Cunningham says, "Never mind that; we can't tell how much embarrassment nor how much it will cost to raise the money;" says he, "We shall not quarrel about that."

Q. Was Oliver in your company through the day of the negotiation in Buffalo?

A. He was not from about 11 o'clock; the balance of the day he was.

Q. And he left town with you, did he?

A. No; he went one way and I went the other; we left Williams' office at the same time.

Q. At the time you represent Mr. Cunningham to have said there was about fifteen thousand dollars in his hands that belonged to Oliver, do you know whether he stated at the same time what

3003 amount of money that was subject to the payment of for advances in the payment of these same lands?

A. He meant there was about $15,000 purchase-money, and that there was three hundred dollars to be deducted out of that that he had let Oliver have.

Q. Whoever paid this money for the Preston lands; was not that to be deducted?

A. No, sir; that was to come out of the mill property.

Q. How do you know; did he say so?

A. That was the agreement; he didn't say so at the time he mentioned this.

Q. You don't know anything about how much money was necessary to be paid before that $15,000 was to be handed over?

A. He said there was about $15,000 in his hands belonging to Oliver.

Q. What did he represent was the character of the Preston lands?

A. The Preston lands, and the Alpena property, and Square Bay lands; and he named over some different lands around that it was.

Q. Did you ask him how much was in his hands belonging to Oliver?

A. I think I did; I asked him if he had enough property in his hands to pay him; the way I asked him—says I, "You say you advanced some money to Oliver," and so on; says I, "Have you got enough money in your hands to pay him?" says he, "Yes, I have got about fifteen thousand dollars in my hands, and Oliver
3004 owes me about three hundred and fifty dollars; that money I have advanced to him;" we stood in the barn at Mr. Hunt's; it was on Thanksgiving Day; I can't tell exactly whether this was before or after dinner.

Q. If these Preston lands were to be deeded to you, how came it that Oliver took a thousand acres of them from Cunningham?

A. Because I told Cunningham I thought there was enough left?

Q. You told Cunningham he might deed these thousand acres to Oliver?

A. Yes, sir. I told him that this same day, right there in the barn. I didn't see them deeded; only Oliver said afterwards, when I saw him, that he got them.

Q Did Oliver ask you to request him to deed to Oliver this thousand acres?

A. No.

Q. Did he ask you to say anything to Cunningham about them?

A. No. I don't as he did. He merely told me he had sold so much land, and was down to have Cunningham convey it; and when he conveyed the land he sent me $350, and some money to Mr. Cunningham.

Q. Oliver sent you?

A. Yes, sir; all I asked him for at that time.

Q. Did you apply that $350 to your own use.

A. I did, for debts that I owed.

Q. Do you know another man that bears your name up at Alpena, a George Hawkins?

A. I am acquainted with him. There is a man up there
3005 of that name. I think I have seen him once or twice. I would not recognize him if I should see him on the street. I think they say he is a lumber inspector. There is also another one in Buffalo of the same name.

Q. Is your name George Washington?

A. Yes, sir.

Examined by Mr. RUSSELL:

I have come here to attend as a witness from Royalton, 26 miles from buffalo. I got here about 7 o'clock this morning. I have to leave this evening at 8 o'clock. Hunt, Cunningham, Eschleman, and I are friendly; and I now do business for Hunt.

G. W. HAWKINS.

WEDNESDAY, *August* 22, 1871.

GEORGE B. MELVILLE sworn: I live in Alpena.; my age is about 35, as near as I can remember; my occupation is lumber inspector; been connected with the lumber business since 1852 or '53; I went to Ossineke in the fall of 1852; I was a boy then, and bound myself out as a clerk in learning the lumber business, two or three years; I was then 13 or 14 years old, I think; I didn't know my age
3006 really; I was born in Aberdeen, Scotland; came to this State in 1862, I think; attended school after coming here, at Green Oak, Livingston county; afterwards, I resided at Duncan City, Cheboygan county; I was clerking there for the United States Government in the U. S. Land Office, in 1857; I taught school in 1857 in Cheboygan. I have been acquainted with the Devil river mill property since 1852; David D. Oliver was in possession of that property when I first went there.

Q. In the season of '66, '67, by whom was the Devil river property worked?

A. In the winter of '66 the property was worked by Oliver & Hawkins up to the spring of '67; then Oliver run the property. In the fall of '67 Oliver & Robinson. Hawkins left the business some time in the spring of '67.

Q. Can you state how many logs were cut and hauled during the winter of '66–'67, and the spring of '67?

A. In the winter Oliver & Hawkins got in somewhere between 2,300,000 and 2,400,000. Robert Robinson, or I think he was in company with another, got in 915,000 and something. That is, in the spring and summer of 1867.

Objection raised to Robert Robinson's getting in any logs.

Q. For whom was he lumbering?

A. He was lumbering for the firm of Cunningham, Robinson & Haines, or Oliver & Robinson, or some one. In the spring and summer of '67 another jobber got in somewhere in the neighborhood of a million feet—making a footing of 4,200,000.

3007 Q. During the winter of '66–'67 and the spring and the summer of '67?

A. Yes, sir.

Q. What position in the business at Devil river did you occupy during the season of '67?

A. Agent and general manager. During the sawing of '67 the water mill run part of the time and the steam mill. At the water mill that season there was cut somewhere about 1,600,000 and 1,700,000. I can't tell exactly; it is over a million and a half. I think 1,600,000. At that time the water mill, in my opinion, was worth $8,000. If you were to really come to the worth of the dam, it would be worth a good deal of money—I don't know how that question is understood. It would be worth in the neighborhood of $3,000 or $4,000, without the privilege. The machinery then in the mill consisted of one circular and upright, lath mills, cross-cut saw, and edging mill.

Q. Is there sufficient water to run the mill the whole season?

A. No, sir.
Q. How much did it cut per day?
A. From 12,000 to 30,000.
Q. How much lath?
A. From 9,000 to 15,000.
Q. When did you first see Geo. J. Robinson and Henry M. Robinson there at Ossineke?
A. Sometime in October, 1867. Their business was to purchase an interest in the property. Oliver was there at that time. There was an inventory taken that fall by the direction of Oliver &
3008 Robinson, by George J. Robinson; that is the way the letter was signed. The order was given to me. Mr. Gallup, Towland, and myself actually took the inventory. The goods in the store were valued at $8,000 or over.
Q. What was the quantity of logs in the stream?
A. It was somewhere about two million and a quarter or two million and a half—I think it was two million and a half. Their value was $8 a thousand.
Q. Was there any teams, horses, and other property?
A. I think there were five horse teams, which were worth about $1,400; two yoke of cattle, worth $200 a yoke. I should think there was from 40,000 to 50,000 feet of sawed lumber, worth between $13 and $14 a thousand, taking it as it run.
Q. Were there any blacksmiths' tools in stock, or carpenters' or farming tools, saws, and other property inventoried?
A. The whole thing was inventoried. The personal property mentioned was inventoried at something over $35,000; that was the inventory value at that time. During the winter of 1867–'68 Oliver & Robinson had four camps. The jobbers of those camps were Ellsworth & Price, Duncan McKay, Ellsworth & Robinson, and Dougald MacArthur. I had the overseeing of the camps. That winter somewhere about 8,000,000 logs were cut and hauled.
Q. What was paid for cutting, hauling, and running to the mills?
A. Four dollars per thousand feet.
Q. What was such stumpage worth at that time?
A. It depended very much on where you cut. It is worth from $3 to $4.
3009 Q. Was G. J. Robinson present at Ossineke during that winter?
A. He was; he came up in the fall—sometime in November.
Q. When did Henry M. come up after he went down the previous fall?
A. He came up along about St. John's day; I think about the 26th of December. He might have come there the 25th. The reason of his coming up, he made some contracts below and came up to see us boys about it.
Q. Please state what connection with the business, or relation to the business, was sustained by Henry M. Robinson at that time—the winter of 1867–'68?
A. Henry M. Robinson is the partner and was agent of the firm.
Q. When you say "is the partner," what do you mean?

A. I mean to say he is the partner in fact, from his own words at that time. He said that it was his money was in the concern, and his orders had got to be obeyed.

Q. Did he give any reason for the property being in the name of George J.?

Objection to all this testimony about H. M. Robinson and his relations to the firm as irrelevant.

A. He did.

Q. What was the reason?

A. Mr. Robinson has a wife here in Detroit, and he can't hold the property. He could not hold the property, and the property was put in George's name. He can't live with her, it appears, from the old man's statement.

3010 Q. What was the mode in which contracts were made at that time, as respects George J. and Henry M. Robinson?

A. Oliver & Robinson.

Q. Do you know whether Henry M. acted in respect to making contracts?

A. He did, in the name of the firm.

Q. Do you remember a contract with Mr. McMillan, of the Detroit & Milwaukee Railroad?

A. There was a contract; yes, sir. H. M. Robinson, so he stated himself.

Q. Do you remember the contract with Geo. B. Green & Co.?

A. I think there was a contract made by Martin Cline in favor of George B. Green & Co., with Oliver & Robinson, and through and by H. M. Robinson.

Q. The Illinois Central Railroad, for Norway pine plank, 16½ feet long, 2x10, and 2x12, free from sap?

A. H. M. Robinson made it, as I understood, when he came home.

Q. Stephen Miller.

A. Yes, sir; there is a Stephen Miller in Ogdensburg. He made a contract with Stephen H. Miller, purchasing agent for the Vermont Central Road.

Q. What funds were used that spring to pay men with, and who brought them there?

A. Sometimes the old man—H. M. Robinson—brought some there; he brought several sums, if I remember right; $500 at one time and $1,000 at another time, and I don't know but he brought more during the season; I don't know whose funds they were.

3011 Part of the time he claimed them as his own, and sometimes George claimed them.

Q. Will you state whether you received a letter from George J. that spring in regard to the funds and other matters?

A. Yes, sir; of the date of April 9, 1868.

Q. State whether that is the letter which you have.

A. Yes, sir.

(Letter produced and marked Exhibit "A.")

Q. When H. M. came up there, who assumed control of the business there at Ossineke; did H. M. assume control of the business?

A. He did when he first came there, in the winter time, along about St. John's day—along about the 25th, 26th, or 27th of December, I think it was.

Q. State whether that contract continued when G. J. Robinson was present.

A. Why, certainly it did.

Q. State whether G. J. was subject to that control and direction personally?

A. I suppose he was as much as I was.

Q. Was Oliver at Ossineke during that winter—'67–'8?

A. He was, a part of the time.

Q. About what time did he go below?

A. I think it was somewhere about the month of January, the fore part of January, 1868; I may be mistaken; it was somewhere in January.

Q. When did he return?

A. Some time in March. He went below to make some contracts with the Haineses. I saw all the contracts when they came.

3012 Q. Did you have any conversation with Geo. J. Robinson in regard to the contract?

A. We did have considerable conversation about them. The observations he submitted on the subject were that, if he submitted to contracts, *that* the funds would all go into Oliver's and his creditor's hands, and there would be nothing left to run the mill. In regard to the Hunt contracts he said they were good.

Q. Did Geo. J. Robinson approve or repudiate them?

A. He repudiated the contracts.

Q. What is your opinion about these contracts?

A. The contracts were good ones, and we ought to have stuck to them.

Objection made to the witness giving his opinion.

A. I think we would have done fully better to let the contracts went than to sell the lumber the way we did.

Q. What mill was run during the winter of 1868–9?

A. The water mill run a part of the time, and the steam mill.

Q. In 1868–9, are you sure it run in that season?

A. In the spring of 1868 I think the water mill run.

Q. In the winter of '68–9, after Cunningham came?

A. Cunningham didn't come until September; but the steam mill run during the winter of '67–8— the spring of 1868.

Q. Then in the next winter—'68–9?

A. We run it until September some time—the steam mill.

Q. After Cunningham came there the next winter, what mill was run during that winter—1868–9?

3013 A. The steam mill. That mill—the steam mill—was 120 x 40 feet. The engine house outside the mill—that is, the main building. That mill was run during the winter of 1867–8 by the company's directions. My position in the business at that time was general manager.

Q. Was there any mortgage given upon any of that property at that time—the winter of 1867–8?

Objected to as irrelevant.

A. There were mortgages given in 1868 by Geo. J. Robinson. When I say that, Geo. J. Robinson signed the firm's name.

Q. To whom did the mortgages run?

A. There was one to Kauffman, the clothing man here in Detroit, and there was one to Andrew Betts, and there was another to H. M. Robinson, and I don't know how many more. They covered all the personal property; and I don't know whether you would call it real or not, but there was one mortgage given on the engine and boilers in the mill.

Q. Who was township clerk at that time?

A. Fayette Jones, I think his name is. He works for the company; kept his office next house to H. M.'s. I kept my office in their office—the company's office. Some of my papers I kept at home, but most of them were in the company's office. The water mill was stopped running in the spring of 1868. H. M. Robinson and George gave directions to have that done.

Q. Did you have any letter from George on the subject?

A. Yes, sir. That is one of the letters.

3014 (Letter of George J. Robinson produced, dated April 24th, marked "B.")

Q. Who actually executed the order to stop the work on the water mill?

A. H. M. stopped the work.

Q. Were any of the men discharged or taken from work who had been set to work by Oliver at that time?

A. I believe there was. I stopped the men from work by the directions of H. M. Mr. Oliver, I understood, had set the men to work fixing up the mill.

Q. After the mill was shut down did Oliver assume any charge of affairs or business there?

A. No, sir; nor afterwards, at all, at any time.

Q. About what time in the spring of '68 did George J. Robinson leave Ossineke?

A. It seems to me it was the latter part of March or the first of April, but I can't state positively.

Q. State whether you received a letter from him upon the 18th and 26th of April, during his absence, and whether these are the letters.

A. Yes, sir.

(Letters produced and marked "Exhibits C and D," dated April 18th and 26th, 1868.)

Objected to as irrelevant.

Q. What was the railroad and dock worth in the fall of '67, when George J. first came there?

A. They were worth $7,000 or $8,000. The dock would hold nearly two million feet.

Q. Do you know the pine lands in towns. 28 and 29 north of range 8 east?

3015 A. I do, most of them. There is somewhere about 15,000 or 16,000 acres. Some of these lands in the fall of '67 were worth a good deal, and some of them were not worth much. They were worth about $7 an acre, $7 to $8 in towns. 28 and 29. I should judge, taking the whole thing, between $7 and $8 an acre. Upon that property, in '67, besides mills, there were two boarding-houses, two barns, one warehouse, one new building; in fact, the boarding-house is a new building, but I mean the building I live in myself and a store. I think that is all. There may be a few more buildings. In my opinion in the fall of '67 those buildings were worth about $7,000, including the mills.

Q. What was the aggregate value of all the property at Ossineke, both real and personal, including the lands, mills, and buildings?

Objected to unless it appears the witness has first taken the necessary steps to learn in detail.

A. Something near $200,000, or over.

Q. Did you see the statement of the personal property made by Oliver and the statement of the mortgages made by him to the Robinsons at the time they came into the partnership?

A. I did. I was then familiar with the personal property and with the mortgages. The schedules given by Oliver to the Robinsons at that time I believe to have been correct. There was no claim to the contrary made by either of the Robinsons. They did not claim Oliver had been guilty of any fraud at the time they bought in; they did afterwards, some time during the winter. They claimed Oliver made a misrepresentation of the property to them.

3016 Q. Had either of them looked over the property completely?

A. No. H. M. went out a little, and George; but they examined all the papers in the office and on file, and one thing or another, and they knew what the property was.

Q. Are you able to state whether either of the Robinsons were qualified to judge of the value of such property?

A. He was not at that time.

Q. Since '67, have either Hunt, Cunningham, Ranney, or Eschleman, or Haines examined the lands and other property there?

A. I have never seen Hunt on the property. Ranney was on the river and examined the logs; Eschleman I never saw, and some of the Haineses I have never seen, I think. One of the Haineses went up and looked at the logs, but I don't think any one, except Cunningham—Cunningham looked over the lands; not enough to examine the whole. I think Cunningham is a competent judge of the value of lands and property of that description, but the Haineses I can't say; I think not.

Q. Was there a negotiation in respect to the purchase of an interest in the real property?

Objected to as irrelevant.

A. There was; early in the summer of 1868, I think; along in May or June.

Q. What valuation was there put by them upon the one-quarter interest which they offered to you?

A. $3,500. At that time I offered Oliver $10,000 for his
3017 right, title, and interest in the property, and pay all the mortgages of Eschleman & Hunt and Cunningham, in fact all the mortgages on the property; also his indebtedness in Oliver & Robinson; that was some time in June or the fore part of July, 1868.

Q. What conversation was there between you and George J. Robinson at the time the offer was made by them of one-quarter of the property to you, etc.; what was said in regard to Oliver's going to sleep?

Objected to as irrelevant.

A, Geo. J. Robinson, H. M. Robinson, and myself had a conversation together, and they thought they could afford to pay $5,000 to Oliver to go to England, and they would pay the stumpage to step one side, and also pay the debts of the firm, including all the mortgages, if Oliver would only step out and be gone—get out of the way. That was somewhere about the fore part of June or the first of July, 1868. I was sent by the Robinsons to make this offer. After I failed purchasing the one-quarter interest they sent George W. Hawkins to pay him $10,000 for his right, title, and interest, and that they would meet all the mortgages on the premises. Hawkins did not succeed.

Q. What did the Robinsons next do to endeavor to compel Oliver to sell?

Objected to as not a proper question.

A. They sent Geo. W. Hawkins to the city of New York to induce the mortgagees to foreclose the mortgage. They furnished him somewhere about $100, I think, for the purpose—may be more. I can't say how long he was gone—some time. After his return
3018 Emor Haines and son came to Ossineke on the part of E. & G. R. Haines, and Philip Ranney on the part of C. Haines & Company, I think, the way they represented things. They came with the intention of buying. As I understood it, they bought or made a contract to buy. They came there in the latter part of June or the fore part of July, or in July some time—I am not prepared to state—in '68. I believe there was a contract made between those parties and Oliver for the transfer of the property. I saw it and read it; it was in George J. Robinson's handwriting. I think it was to run out about the 4th or 5th of September, 1868. I think I would know the contract if I saw it.

Q. State whether that is the contract.

A. Yes.

Objected to as irrelevant.

(Contract offered in evidence, and marked "Exhibit E.")

Q. Do you know the signatures?

A. I know the signature of Robinson; I don't know as I would know Haines'.

Objected to.

Q. Do you know the signatures to that paper?

A. I know Oliver's and Robinson's handwriting. The other two gentlemen I don't know. When they went away Mr. Oliver, and it seems to me Mr. Hawkins, went with them. I think George went down with them, or the day after, or a day or two after—I think he went with them.

Q. Do you know whether George J. Robinson had any interest in this contract from his own statement or otherwise?

3019 A. Certainly he had—he was going to buy in with them.

Objection made to answer as not being responsive to the question.

After Robinson left I received a letter from him in regard to the subject.

Q. On the 22d and 28th days of September, 1868?

A. It seems to me it was before that. George also wrote to his father in regard to the matter after he left.

Q. State whether that is the letter.

A. It is.

Objected to.

Q. How did it come into your hands?

A. My letters and his letters came together; he was boarding with me; I don't know how it came it was among my letters.

Letter annexed, marked Ex. "F."

Q. Where did the Robinsons board at that time?

A. They boarded with me. Before the expiration of the Haines contract, September 5th, Henry S. Cunningham came to Ossineke; I think it was the fore part of September or the latter part of August.

Q. What plan was talked over by the Robinsons in regard to excluding Oliver from the property?

Objected to as altogether too leading and not properly framed as a question.

A. There were a good many devices entered into.

3020 Q. State whether Cunningham's name was mentioned by either of the Robinsons, or both of them, in connection with this device.

A. It was.

Objected to as irrelevant.

They must have talked about this subject as early as April, and I don't know, but earlier. It seems to me Cunningham's name was mentioned by them in connection with this subject as early as June, 1868; it might be a little later.

My interest in the matter was this. I supposed I was going to have a quarter interest if they got Oliver out. George J. and H.

M. Robinson agreed to give it to me. I don't remember how long Cunningham stayed at Ossineke. I think he was there probably eight or ten days, maybe not quite so long. The Robinsons and Cunningham had interviews during that stay. There was so much talk between them, I don't know that I can state what the exact conversation was.

Q. Did you know what was being done between them?

A. I knew that Cunningham was going to buy the property or get it into his hands. I knew of an arrangement between him and the Robinsons. I understood that Cunningham was to have the property. Cunningham was to run the property with the Robinsons, and pay up Oliver's debts, then the property was going back into Oliver's hands again.

Objection made to the answer as not being responsive to the question, and not undertaking to state facts at all.

3021 Q. From whom did you have this understanding?

A. From the firm; from H. M. Robinson and George J. They talked the matter over before me. I understood the same from Cunningham. They were all together when I received this understanding from them. I think it was in my house, or else on the dock; I don't remember now where. It might have been in the office we talked the matter over. They talked freely with me on the subject. Oliver was not present at the talk. When Cunningham went away he left George W. Hawkins as his agent.

Q. Did you witness the delivery of any of the property?

A. I saw Oliver deliver the paper on the dock to Cunningham.

Q. How much lumber?

A. About two million feet, worth about $26,000. In the stream and pond and on the banks of the river the logs would number in the neighborhood of four million, worth about $32,000. I think the inventory of the goods in the store was either $8,000 or $11,000. I saw the bill of sale of the personal property on file in the town clerk's office. The other personal property delivered was horses, harness, camp equipage, etc., etc.—the whole stock in trade. The aggregate of the whole personal property was about $76,000, including lumber on the dock, logs in the river, horses, harness, and goods in the store. I think Hawkins remained as Cunningham's agent a week or ten days. George Robinson went below a few days after the transfer. After he went below I received two letters from him, on the 22nd and on the 28th of September.

3022 Q. Will you look at those papers and state whether that is the original letter of the 22nd of September?

A. That is a copy; the original letter of this, I think, is in Mr. Canfield's office—the original of the letter of the 22nd; I think Mr. Canfield's clerk made this copy. I believe that to be a correct copy; when the copy was made I compared it with the young man in Mr. Canfield's office.

Q. The letter of the 28th, that is the original, is it?

A. Yes, sir.

(Letters put in evidence, marked Exhibits "G" and "H.")

Objected to as irrelevant..

WITNESS: The next season, 1868–'69, I had control of the logging camps; there were three camps. The best timber we had was cut that winter; the instructions were to cut nothing but the best; I think they averaged 520 feet.

Q. Was the timber cut wastefully or reasonably?

A. Oh, we went in and cut the best timber out—culled the timber right through. That winter there was somewhere between seven and eight million; they were worth from $9 to $10 a thousand at the mill; I offered $12 a thousand for a million feet; that I consider a fair price. Stumpage at that time, cut clean, was worth from $3 to $4; cut as it was, it was worth $4.

Q. Can you give the descriptions cut from that season?

3023 A. Yes, sir (looking at maps); we cut on section 10, in town. 28, range 8 east (in the winter of '68–'69); section 3, town. 28, range 8 east; section 4, section 5, and some on section 2; part of section 32; part of section 33, in town. 29, range 8; section 27 (same town and range), and section 34. Those logs would run off uppers somewhere from 20 to 30 per cent. That summer the lumber was shipped some to Buffalo, some to Sandusky, some to Toledo, some to Chicago, some to Detroit—in fact all over.

[Q.] Directly after Cunningham came up there and put Hawkins in as his agent, what name did the firm or business assume?

A. It is a hard thing to answer that; there were so many different changes—so many different firms—I don't how as I could state; sometimes George J. Robinson *et al.;* sometimes it was C. Haines & Co.; sometimes Robinson, Haines & Co., and I can't state who the company was, although I was the agent.

Q. Do you know the firm called the Ossineke Mill Company?

A. They did run a little spell under that; I think it was in 1869.

Q. Do you know when it commenced to be Robinson, Haines & Co., and when it commenced to be Cunningham, Robinson, Haines & Co.?

A. I think it was some time in '68—the fall of '68—Cunningham, Robinson, Haines & Co.; I don't know when it commenced to be Robinson, Haines & Co.; I think Cunningham was not known in the firm before the 3d of September, 1868.

Q. Do you know whether the term "Ossineke Co." or "Ossineke Mill Co." was used?

3024 A. I think it was used for the purpose of keeping Oliver & Robinson's creditors from attaching the goods. I think that was the blind that was put on.

Q. What was said about the mortgagees being in the company by Robinson?

A. The way I understood it from the Robinsons and the firm was that the mortgagees held the property, and they were all one combined firm.

Objection raised to the question, and the way in which it was answered.

Q. When and where, and from whom did you understand that the company was a combination of all the mortgagees?

Objected to as leading.

A. By the Robinsons; in September, '68, some time; either at my house or at the mill, or at the office. I was round them all.

Q. State whether the two Robinsons, Cunningham, and Hawkins talked these things openly and freely with you.

A. They did.

Objected to as improper, from its leading character.

Q. Who contrived the Cunningham trust?

Objected to, that there is no contrivance or anything about it shown here, and also as leading.

Q. Who framed it, devised it, or planned it?

A. Myself, H. M. Robinson, Cunningham, and Geo. W. Hawkins.

3025 Q. How do you know that the Cuningham trust was devised by the persons named by you?

Objected to, that it has not been shown what the Cunningham trust is by this witness.

A. We talked the matter over, I as their agent, with no blind or any hinge about it. It was known between Robinson and myself and Hawkins.

Q. State whether the fact and the object of the transfer to Cunningham was kept secret, or whether it was openly stated at the time by the parties in interest.

A. I don't know as I could answer that question, because some of us understood it as being secret—to keep it from the men—and others understood it to be publicly known. I derived all my knowledge concerning the contracts from the Robinsons, Cunningham, and Geo. W. Hawkins. From their statements I understood the contract at that time was that Cunningham was to hold Oliver's right, title, and interest in that property until his debts were paid up; then the property was to be deeded back to Oliver. In the interim George W. Hawkins was to manage the woods part, and I was to run the mill, to see to manufacturing the lumber—have the general agency. George J. Robinson and Mr. Cunningham was to do the selling. Reuben Gallup was to keep the accounts. I can't answer who was to pay off and take up the debts.

Q. What debts were to be paid?

A. All the mortgages; the Hunt and Eschleman mortgage, Haines mortgage, J. B. Wayne's mortgage, and some others; I forget, there were so many of them; and there were some debts in Saginaw; some the liabilities of Oliver & Robinson, and some Oliver's.

3026 Q. By the terms of the contract, were the liabilities of Oliver & Robinson to be paid?

A. Yes, sir; all of them; as for the individual debts of Oliver, I

can't state; during the winter of 1869–70 I took charge of the lumber camps; I think there was somewhere between seven millions and eight millions logs cut.

Q. State whether the same course was pursued in regard to cutting logs as in the winter previous.

Objected to as leading.

Q. What instructions were given in regard to what class of logs to cut, and what were cut?

A. The upper camp cut the best timber in the country; we aimed at it; the instructions given were to cut out the best timber; the logs were worth between $8 and $10 at the mill; stumpage that winter would be worth from $3 to $4.

Q. How many logs were got out by the firm at Ossineke in the winter of '70–'1?

A. I have not got it, only from information from the foreman.

Objected to.

Q. What is the foreman's name?

A. McDonald.

Q. What did he tell you?

Objected to as hearsay.

Q. Was he actually in possession when he told you?

A. Yes, sir; is now; he is their manager and foreman.

3027 Q. How many did he say?

A. I think it was five million and a half; the winter of '70–'1 the stumpage was worth between $3 and $4; it depends much on where the timber is got out; since the fall of '67 there have been some thirty million logs cut on that property; the average stumpage has been worth, I should judge, $3.50 to $4, probably $3.75.

Q. What has the use of the property been worth per thousand feet for cutting this timber; that is, the use of teams, tools, and mill, without stumpage?

A. I should say for the use of the mill and the use of the horses, etc., $1 a thousand for manufacturing, right along from 1867 to '71; that is what they generally pay a mill for manufacturing lumber and the use of the mill—that is, for the rent of the mill; the valuable and permanent improvements put upon this property since the fall of 1867 has been one gang, two patent edgers, one engine, two or three dams have been erected, and there has been five or six shanties built; I think that is all. In the first place, I think the machinery cost seven or eight thousand dollars; one of the dams cost but little, and the others cost a good deal; one of them cost between $500 and $700, and the other one cost, I think it was, $800 or $1,100; I won't say which; the shanties would not cost, I don't think, to exceed $40 apiece; other permanent improvements upon that property since the fall of '67 up to the time I was last there, May, 1871, would probably be about $11,000; $12,000 would cover it, I think; these improvements have added to the sawing capacity of the property, I should judge, one quarter; not more than one-third.

3028 Q. How much have the gross receipts of that property been since the fall of 1867?

Objected to as irrelevant, inasmuch as it don't show anything that is desired by this proceeding.

Q. From that time until your acquaintance with the property ceased—May, 1871?

A. About $325,000; the net receipts have been somewhere near $200,000.

Q. How do you know the gross receipts and the net receipts?

A. I deduct $4 from the total for sawing, which you can get it done for anywhere, and gives a big percentage; I can get it sawed in Saginaw for $3.25, and I deduct $4 for the saw-bill; by the amount got out and sold I get at the gross receipts, and then I take from the total $4 for sawing, would be $90,000, which leaves $25,000 to swing on.

Q. Leaving $25,000 for sundries?

A. Yes.

Q. Have any payments been made for cutting—the concern have done their own cutting?

A. They done their own cutting—there was part of the time, I think in the spring of 1868, the water mill was run by the thousand; a man run it, and I think all we paid him was 12 shillings. At the time of the delivery of the property on the dock the vessel Champion was lying at the dock.

Q. What conversation took place between you and the Robinsons on the dock as to the question in whose name the lumber should be shipped?

3029 A. The Robinsons and I had some talk; says I, "Whose name am I going to ship this lumber in?—I ain't going to come in collision with Cunningham." Robinson said, "Go on, there are no papers signed yet; ship the lumber, and ship it in the old man's name"—H. H. Robinson's. George J. said that, and the old man was there at the time.

Q. Did you know of any chattel mortgages given by Oliver & Robinson to H. M. Robinson?

A. Yes, sir; there have been so many given I can't state the time; there was one given some time in September—same bill of sale was given to him before—September of 1868, I referred to. There was a bill of sale made by George J. Robinson to H. M. The real object was to keep the thing within themselves; they were always afraid of attachments and one thing or other—afraid of Oliver's creditors coming on and getting something. There was a mortgage given by Robinson, Haines & Co. to Garrett B. Hunt. The object was to keep off creditors, I suppose—I don't *know* what it was done for.

Q. Do you know, whether, in August, 1868, Haines and Ranney caused the property to be examined by any land-looker?

A. Yes, sir; his name is Johnson, who lives in East Saginaw.

Q. Do you keep a diary?

A. Yes, sir.

Q. State whether you made an entry in your diary in regard to the time when Cunningham came to Ossineke, in September, 1868?

3030 A. I did; I have my diary with me. The entry is "Cunningham, Oliver and Hawkins on the dock. I think Oliver is transferring his interest over to C.; we are loading a vessel. H. M. R. on dock; that is the 3rd of September." I believe the entry to have been made at that time.

Q. By Mr. DUFFIELD: Do you swear it was made that day, or do you swear it is under that date?

A. I swear it was made on that day.

Witness desires this testimony to read that the entry in the diary was made either on the 3d or 4th, but believes it was on the 3d.

Q. Will you give the value of lands outside of what are termed outside lands—towns. 28 and 29, called the Devil river property—lands belonging to Oliver?

A. I have been over them, examined them; went with Cunningham on them in 1866, part of them, and the value of them I should judge was somewhere near $40,000. I was postmaster of the town there.

Q. Can you give any particular expression which was used by George J. Robinson, in regard to Oliver, at the time Cunningham first came there, in regard to what would be done to Oliver?

Objected to as irrelevant.

Q. Would your memory be refreshed if I were to show you your affidavit?

A. Yes.

Complainant's counsel shows the affidavit made in this case on the 20th of April, 1871, against the protest of the opposite counsel.

(WITNESS:) They were going to clean him out.

3031 Q. Did Oliver ever make any demand in regard to settlement from the Robinsons to you, or any other person, to your knowledge?

A. He did, in the steam mill, on the platform; I think it was in June, 1868, some time; he was dissatisfied with the way the property was running, and demanded a settlement.

Q. Was anything said at that time in regard to the appointment of a receiver upon the ground of the insolvency of Oliver?

A. The Robinsons so told me, that they would have a receiver appointed; that Oliver was insolvent; I was deputy sheriff of the county of Alpena, and sold the property of Oliver & Robinson at sheriff's sale some time in the spring, under a writ of attachment, I think it was; there was a judgment in the justice's court; the constable had hold of that; then they feed the constable some way and put it into the circuit court, and I got my writ through the circuit court; the property sold were the boilers on the west side of the mill; H. M. Robinson, I think it was, bid in; I was township treasurer at one time, and sold the property for taxes; I don't know as I

could state all I sold; I sold some boilers on the east side of the mill, the engine and machinery, smoke-stack, and breeching; I can't state all I sold; it was for taxes against Oliver & Robinson; H. M. Robinson bid in; Mr. Oliver was not present at Ossineke at the time.

Q. Do you know why the sale was permitted by either of the Robinsons?

Objected to.

3032 A. I understood from the firm the old man wanted to get that and hold it outside of Wayne. Wayne had a chattel mortgage, and they were afraid of him, and the old man bought the property in, so as to get it in his own name.

Q. Do you remember the foreclosure of the chattel mortgage given by Oliver & Robinson to H. M. Robinson?

A. I do.

Q. Do you know whether or not that was really paid at the time?

A. They were sold under that mortgage—chattel mortgage; the personal property was sold under that mortgage. What I mean by the personal property, horses, harness, sleighs, and so forth. I suppose that mortgage was paid because I turned them out lumber enough, and sold the horses, harness, sleighs, etc. The foreclosure was gone through with for the purpose of keeping Oliver & Robinson's creditors off, as I understood the whole transaction. H. M. Robinson bid in the foreclosure.

Q. At any of these execution sales and tax sales or foreclosure sales did any other person than H. M. Robinson purchase?

A. I think Daniel Carter, of Alpena, bid for H. M. Robinson, and then transferred to H. M. Robinson.

Q. Do you remember Oliver sending some money to Ossineke in 1868, in the spring?

A. There was some money came from Oliver. I don't know whether Croft brought it or whether H. M. Robinson brought it. The sum brought was somewhere between $800 and $1,000.

3033 Cross-examination:

I am in Detroit now as a witness in this suit, and have been inspecting lumber. I came to the city, I think, on the 9th of August; came here on business of my own. I understood this suit of Oliver's was on trial, but came expressly on my own business. Mr. Oliver wrote me while I was in Cheboygan that his suit was coming off on the 14th. I have not got the letter with me, nor can't state what else was in it. I don't decline to state, but I can't recollect further. I first saw him here the second or third day after I came.

Q. When was that?

(Witness looking at diary.)

Q. Don't you remember anything without looking at that book?

A. No. I generally keep a diary of everything. I think it was on the 11th I saw him. It seems to me the first place I saw him was at the Franklin House. He had not written me to come there. He

was not staying there. I have stayed there ever since I came. He stays at the Michigan Exchange. Since I came I have seen Oliver at the Franklin House perhaps two, three, or four times. I have seen him at the Michigan Exchange perhaps three or four times, or half a dozen—such a matter. I don't know as I have had any interviews with him in regard to my testimony in this case. I have not talked with him about the subject-matter of my testimony in this case. He has not furnished me any memorandum of figures or facts as to my testimony in this suit. I have furnished him
3034 with the facts of the suit as I understand them. I did that about a week ago. The memorandum I furnished would probably cover six sheets of paper.

Q. Were those figures that you have testified as to the quantity of lumber manufactured on hand, and of logs and the values of property, personal and real, expressed in that memorandum?

A. I don't know as it was. I could not swear they were not.

Q. Then, if I understand, you have volunteered your testimony in this matter to Oliver, and it was not sought from you by Oliver?

A. Yes, sir. There is no understanding between Oliver and I as to my compensation for giving testimony, direct or indirect. I have not received from him money or other valuable thing in return for my testimony here. I never asked him for anything, and he never advanced me anything one way or another. I don't expect him to pay me anything. I never talked with him about my compensation. He has not paid one cent for my board since I have been here.

Q. What induced you to leave your business and to come here and volunteer your testimony in this matter?

A. Other business in Detroit.

Q. What induced you to volunteer your testimony in this matter?

A. I don't know as it makes any difference which side I appear on.

Q. That is your answer, is it?

A. Yes, sir; I am inspecting lumber here for Benson &
3035 Cline, Stephen S. Miller, of Ogdensburg, but principally through Benson & Cline.

Q. Who suggested you as an inspector for them?

A. We have been acquainted a good many years together, and he has taken lumber from my inspection. Martin Cline had bought lumber of the firm of Oliver & Robinson, left it to my own inspection, and was satisfied it was right. While I was in the company of Geo. B. Green & Co. he has measured the lumber after me and found it was all right. Mr. Oliver has nothing to do with the position I have as inspector.

Q. How many days have you been employed in their behalf inspecting lumber since you have been here?

A. I think it is three or four days, might not be so long. That is all the time I have been employed inspecting lumber since I have been here. I have been here on my own expense all the rest of the time. My bill at the Franklin House is not paid, but I expect to pay it myself. Before Robinson associated himself with Oliver I had been in the employment of Oliver off and on about nine years

As a business man, I call myself a lumber inspector and a lumberman, also a mill man. I call myself a competent and regular inspector of lumber. I am such as a matter of fact. Never heard that I was a poor, incorrect inspector. My position in the firm of Oliver & Robinson was general manager.

Q. What do you call general manager?

A. A man that looks after the business. In managing that business I had to see that the mill was run right, see that the logs were got in right, see to shipping and measuring it, etc. I have
3036 run a mill. I run a mill in Alpena by the thousand; it seems to me that was in 1859. I run the mill from spring to fall. That was the Broadwell mill.

Q. Were you the lessee of it, or the millman that run it, overseer and foreman, had a contract and cut the logs by the thousand?

A. I run the Ossineke steam mill. Everything was subject to my orders; that is what I call running it; and I can file a saw or run an engine. I didn't keep the books for Oliver & Robinson. I kept the time-book part of the time.

Q. If you didn't keep the books of Oliver & Robinson, how did you get the entries off the books, some of which you have given in your testimony?

A. The books were subject to my examination.

Q. Did Oliver ever ask you to furnish him entries, or an abstract of entries, from these books?

A. He did not. My duties as manager of the firm of Oliver & Robinson were to see to running the mill; sometimes done the filing; inspected the lumber sometimes, most of it; went in the woods and got camps located; done the road running; located by main roads; run the river; superintended dam building, and looked after the business in general.

Q. Did you ever raise any money for them?

A. I believe I did. I raised money in Alpena for the firm of Oliver & Robinson (the pencil writing is rather blurred, but I think it is $40). I borrowed the money of Mrs. Daniel Carter to pay off the men with.

Q. Is that all the money you ever raised for them?

3037 A. I can't tell you. I have quite a lot of cash accounts. It is a little blurred. There is some more money I borrowed, but I can't tell how much, it is so blurred.

Q. Under whose instructions and orders were you?

A. Under the firm's.

Q. Who took principal charge of managing the business, raising the money, keeping the books, giving the directions, and so on?

A. Myself and George J. and H. M. It is hard to tell which was the principal manager. H. M. Robinson, I presume, was the manager. He is the man we looked to for head orders. George J. done the work. As I understand it, H. M. Robinson was the partner in fact. I saw the articles of copartnership. George J.'s name was to them as partner.

Q. Do you not know that H. M. Robinson was never a partner in that concern?

A. I don't know it. I left there in the spring of 1870—got dissatisfied. I think it was not a mutual dissatisfaction. I heard no complaints against me. I never had any difficulty with them. I got dissatisfied, because there was so much lawsuiting going on. There were a good many lawsuits in Alpena county. I couldn't tell you how many. When I left there I came to the city of Detroit, went up home, and from there I came to the city of Detroit. My home is Alpena.

Q. Have you made your home here ever since?

A. I was here all last summer; that is, I would be sent off
3038 all over the State. I am now working for Benson & Clark. I work for them by commission and by inspection, as I understand it.

Q. In the winter of '66–7, how do you know the number of logs got out?

A. By inspecting the tally-books and accounts rendered in the office. The last time I saw them was the year we worked. I might have seen them since. In '69, '68, and '70 I had access to the books and saw the accounts. I can't state when I last saw these entries on the books.

Q. Did you see the entries on the books as to how many logs were got out in 1866–'67, after the year 1867?

A. It seems to me I saw it in the spring of 1868. I can't state for certain. I remember these figures, because I was knowing to the facts and set them down. I knew how much lumber was got in by each man from suits in Alpena, commenced by each man; mostly all the jobs, excepting one. I remember them mostly from seeing the amounts on the books and by taking a memorandum of it. I take a memorandum how the jobber stands to know whether to stop his credit or not. I had a perfect right to understand those books, and if a jobber was overreaching his account I had a right to stop his credit. At the time the jobber settled up I took a memorandum of it at the time.

Q. You remember them since?

A. My gracious! I ought to remember them. I was the man to look over everything, what the quality of the logs were, and whether they were getting them in right or not.

Q. Did you ever estimate the cost of the dam?

3039 A. No; I knew what it cost by the books. That is the way I estimate the worth of it, and I kept the time-book of the foremen under me.

Q. How do you know the mill is worth $8,000?

A. I would be very glad to buy it for that. That estimate does not include the dam. I can't state what that mill is worth now. I estimate it at $8,000 for 1867 or for 1868.

Q. Do you know whether any of the machinery was taken out of it in 1868?

A. I do.

Q. Was it worth the same after the machinery was taken out?

A. Of course not.

Q. How, then, do you say it is worth the same in 1868 that it was in 1867? Wasn't the machinery taken out a good part of it in 1868?

A. I didn't say a good part of it; there was a part of it.

Q. How much was there taken out?

A. In 1868; no, excuse me. I believe there was, though I can't remember.

Q. I want to know how you estimate that mill as worth $8,000 after part of the machinery was taken out—the same as it was in 1867?

A. The flumes are there yet, and was there then.

Q. Do you estimate it worth that?

A. I do estimate it worth $8,000.

Q. Did you estimate it as worth that in 1869?

A. I do. I have not seen the mill since the spring of 1870, at least I have not been in it. I left there in the spring of 1870.

3040 The reason why I say the logs were worth $8 a thousand in the stream is because I know they were worth it; I offered the firm of Oliver & Robinson $12 for a million feet delivered in the chains; that was in the spring of 1869; I proposed to pay for it in cash.

Q. Did you ever know of any stumpage paid as much as you testified that stumpage to have been worth?

A. I have known stumpage paid $3 to George N. Fletcher, of the city of Detroit; that was in the county of Alpena; I don't know as there ever was any sold at Ossineke.

Q. Did the firm pay stumpage?

A. Yes; I understood by George this spring or last summer that he had to pay or did pay $3 stumpage; I don't know whether he did not.

Q. Did you ever know of any such stumpage as that paid there in all the time you were there?

A. No; I don't know as I did.

Q. Where did you ever know of $4 stumpage paid, and when?

A. It seems to me it was in Alpena; I can't state when or who by; to my recollection there has been $4 paid, and I don't know but $5, but by whom I can't state.

Q. Don't you know that no such stumpage was ever paid?

A. No; I believe there has been higher stumpage than $4 paid.

Q. I want to know as a matter of business whether any such stumpage was, as a matter of fact within your knowledge, ever paid anybody?

A. There has, but I can't tell the parties to-day.

3041 Q. If you don't know any of the persons that ever paid such stumpage, how can you swear that that stumpage was worth, as you told Mr. Russell, $4 to $4.50?

A. Because we went on and picked the best timber, and I would be very glad to pay $4 stumpage for it if I had the same chance.

Q. Did you make an estimate in the winter of 1870 as to the amount of lumber left on any of the Devil river lands?

A. I did not; not in the winter of '70.

Q. Did you furnish a statement of the condition (with reference to

the lumber) of any of these lands to Henry S. Cunningham in the winter of '70?

[A.] I don't know whether I did or not; I don't think I did; if I did, I should judge it was a true statement; my estimates to the value of this property were made by inventory; it was the spring Ranney came there; I think it was in '68; there have been several taken.

Q. The estimate you have given as to the value of all the property were estimates that you made at the time Ranney came there?

A. It was since, I think.

Q. Were they the same estimates?

A. I think not; I had an inventory taken; I think it was in the fall of '68, and there was one taken in the spring of '68.

Q. Was the property estimated by you at the figures you have given in '67?

A. Some of it was, and some was not; the personal property, excepting the goods in the store, were estimated by myself and part of the goods in the store by myself.

3042 Q. Who to, and for what?

A. By orders of George J. Robinson, for Oliver & Robinson.

Q. The personal property was estimated by you with the exception of the goods in the store, at the same figures you have testified to?

A. No; I think there is a variation, but what the variation is I can't state.

Q. When did you first make these particular estimates you have sworn to?

A. In 1868.

Q. Were the values then fixed upon this property in '68 the same as you testified to to-day?

A. I think they were.

Q. How came you to make those values in '68; just for the fun of it?

A. No; I don't think I did; I don't know as I can state why; I have figures in my memorandum book to show I made the estimates.

Q. How do those figures show you made them in '68?

A. I can give you the number of feet shipped, and from the books of the firm.

Q. Do you say those figures there were made in '68?

A. I say they were made from memorandums and papers I had; these figures were not made in '68; they were taken from the front part of my books; these figures, I think, were made in the spring of '70.

Q. Did you make them at anybody's request?

A. No.

Q. How did you dnow you would be asked as to these values on this examination?

3043 A. It was my impression I should be called on the stand by one side or the other; nobody told me I would be asked as to them.

Q. Did anybody come from Oliver and talk with you about it?

A. No, sir; I have not testified to any facts or figures from data

furnished by Oliver; the water mill was shut down in the spring of '68; the reason, H. M. Robinson & Son deemed it not profitable to run; why it was not profitable to run I could not state; the steam mill was then running.

Q. Could the water mill be run profitably or conveniently while the steam mill was being run?

A. It could.

Q. Could the logs be brought round and hauled up into the water mill while the steam mill was being run?

A. Yes, sir; there was no interference only when we flooded to furnish the steam mill with logs; Oliver did not assent to the shutting down of the mill of this mill; he protested against it when he came home.

Q. What did he say, and who to?

A. The conversation was pretty loud words; he wanted the shingle mill to be put in there, and the mill to be run.

Q. How did you come to get this letter of George J. Robinson's to his father?

A. I can't state, unless it was among my letters; George's letters and mine were together in the house; I first found it was in my possession in 1870, after I left there.

Q. Why did you not send it back to him?

A. I don't know as I could state; I did not take it out of his letters; I never offered to return it to him.

3044 Q. You proposed to use it in this examination against him without notifying him you had it in your possession?

A. I didn't propose to do anything of the kind.

Q. You have done so, haven't you?

A. I have.

Q. Did you not say you volunteered this testimony?

A. I did.

Q. You testified about certain plans that Mr. Russell asked you about by the Robinsons as to excluding Oliver from the property. I want you to state what plan, if any, was ever originated by the Robinsons for that purpose, when and where, and just what it was; in the first place I want you to detail when the parties came together to frame this plan, just what it was, and all about it—what was deliberately done by the Robinsons for this purpose?

A. There was a dissatisfaction in the spring between Oliver and Robinson; this was early in the spring of 1868; that is, they wanted to get Oliver out; they were willing to pay him ten thousand dollars to get him out—pay all the incumbrances on the property; then when he refused that they offered to pay him five thousand dollars, through me, to have him go to sleep or go to England and rest still, and they would pay the stumpage besides, and they would pay the debts; that was some time in the spring—whether in the month of May, June, or April, I don't recollect.

Q. That plan, so far as I understand your reply to my inquiry, consisted in these propositions they made to him through you?

A. Yes, sir.

3045 Q. Did you ever know of any arrangement made between George J. Robinson, Cunningham, Oliver, and Hawkins to the effect that Cunningham was to run the property and Robinson was to pay up Oliver's debts, and then when that was done to deed the property back to Oliver.

A. Yes, sir; that was the understanding when Cunningham bought in; that arrangement was made at Ossineke, and I think it was talked over in my house and talked in the office.

Q. Who was present when this was talked over and arranged?

A. Mr. Hawkins was present, and I think Mr. Gallup; it has been talked over so much, I can't state any further; it was talked over a few days previous to the purchase.

Q. You can't tell who the parties were, nor where they were, nor whether all the parties were present there when it was concluded?

A. No, I can't state for certain; after Cunningham left I think Hawkins stayed there a week or ten days; I can't state for certain when he left.

Q. Did you hear George Robinson say anything about his refusals to recognize him as a party in the managment and control there?

A. I saw the letter and George and I had some conversation about it, but what it was I can't state.

Q. Do you not know that Geo. J. Robinson refused to recognize him as his agent?

A. I believe he did refuse to recognize him; he did not
3046 state to me that he could not recognize Cunningham as a partner in the business; he might have written me to that effect; I don't know that he did.

Q. You stated the object of the use of this name, Ossineke Lumber Company; how long was that name used by Oliver & Robinson?

A. I could not state; during the summer and fall, I think, of 1868 or 1869; might have been used beyond that; I don't know.

Q. Do you ever see Cunningham, George J. Robinson, Oliver, Hawkins, and yourself all together on any occasion in which they closed up any plan for consolidating the interests of the mortgagees, as you say, and the running of that property?

A. I never was present with all these parties. On the 3d of September, 1868, I was at Ossineke, and I don't know but I was at Alpena the same day.

Q. How do you know you was at Ossineke on that day?

A. My memorandum says so. Why I think I may have been at Alpena that day, I was in the habit of riding up and down getting stuff for the place. I may have been there that day, and I might not. I could have been there without my memorandum saying so. Sometimes I would be there two or three times a week, sometimes less.

Q. How do you know that memorandum in the diary refers to these parties being on the dock at Alpena or Ossineke; what makes you think it was the dock at Ossineke?

A. Because it reads so.

Q. It don't read so; it don't say where; might it not have been on the dock at Alpena?

A. No, sir.

3047 Q. Did you ever make a memorandum in that book while you were at Alpena?

A. Some of it is, and some of it is not.

Q. Can you recollect the circumstances of their landing on the dock?

A. No, sir; I think the boat at the dock at the time was the Huron; I won't be positive; I can't state. I don't remember what time of day it was I saw him, nor what day of the week, only by referring to my diary. The next day after that, I think, Cunningham took an inventory, or took formal possession of the mill.

Q. Is that the first thing you remember his doing after he landed?

A. No; he was there quite a number of days. The first thing I saw him do at Ossineke in the way of business was talking with the Robinsons about business matters. The particular first time I saw that I can't state.

Q. Did you see him before Sunday on that trip?

A. I might; yes sir. I don't know as I could state where he went that Sunday. I think I was at home that Sunday. I think I saw him on Saturday, but at what particular place I can't state.

Q. Can you state what day of the week it was when he called these parties together and made this appointment of Hawkins you speak of?

A. I think it was along about the 4th day of September that he made this appointment of Hawkins. Right away after that Oliver went below; Cunningham also went below. They went by way of Alpena, I believe. It was not the same day the appointment was made; it was along about the 5th, 6th, 7th, or 8th.

3048 Q. Then they stayed several days at Ossineke after this appointment of Hawkins was made before they went to Alpena to go below?

A. I think they did; maybe a day, or a day and a half, or two days. Hawkins remained on the place, and I think went into the woods. I think the next day after Cunningham left.

Q. Do you know anything about the execution of a deed from Oliver to Cunningham—the circumstances of the execution; did you witness it?

A. No; I did not see it done.

Q. Do you know what day it was executed on?

A. It seems to me it was the 3d or 4th of September.

Q. Did you see it executed?

A. I went down to the clerk's office to look for myself, and it seems to me it was the 3d or 4th day of September.

Q. That it was executed?

A. Yes, sir.

Q. I am not asking you when it bore date, but when it was executed.

A. I have stated it was either on the 3d or 4th of September.

Q. That is what you swear?

A. That is what I think.

Q. How do you know it was?

A. I have stated I went down to the clerk's office and found it on file. That is all I know about its execution. I don't know as I could state how I found the deed on file. I did find it there, and looked at it. I think I made a memorandum of it in my
3049 diary. The diary I have the most minutes in I can't produce. It was taken from my house in 1869.

Q. Are you confident about these dates at all?

A. I think I am.

Q. Do you pretend to tell me you know Cunningham was there on the 3d of September?

A. It seems to me he was, or I would not have wrote it down. I can't swear positive; it is my candid belief he was there. That is all I can say about it. I may be mistaken a day, but I don't think I am; don't think I can be mistaken more than a day.

Q. How do you know 30,000,000 logs have been cut off that place?

A. By keeping the reckoning of it myself. I have kept the reckoning from spring to winter and winter to spring. I knew what logs were in.

Q. Did you not state somewhere what you called the gross earnings?

A. I think I did.

Q. Do you know that those were the net earnings by any careful examination you made?

A. I have allowed the firm $4 for making the lumber. I have called the lumber so much, which, in my opinion, is right. I don't estimate any other expenses.

Q. You get at the net earnings by deducting $4 a thousand for cutting, and then taking the whole amount sold; is that it?

A. Yes. I consider the logs at the mill worth $8 a thousand, or from $8 to $12.

Q. Which do you deduct from?

3050 A. I deduct from either. I deduct $4 a thousand for the sawing bill. I considered the lumber as it run $13 right there.

Q. You said at the time that mortgage from Oliver & Robinson to H. M. Robinson was foreclosed you supposed it was satisfied. Do you mean you supposed it was satisfied from the sale?

A. Yes; and the lumber we turned out to H. M.

Q. Satisfied by the sale then made?

A. At that time. It was sold during the winter on that chattel mortgage; sold the teams, harness, sleighs, camp equipage, and everything. I thought there was enough to pay the mortgage; think so now. Then I turned out some lumber to him in the spring.

Q. Do you mean it was satisfied by the sale you made?

A. I didn't make all the sale.

Q. Didn't you make the foreclosure sale?

A. Mr. Tuttle, the firm's lawyer, came down and sold under that

mortgage, and I happened to be in the bush and came along, and they wanted I should sell the balance.

Q. You sold part and Tuttle sold part?

A. Yes; I don't know how much the thing brought.

(Signed) GEORGE B. MELVILLE.

3051 AUGUST 25, 1871.

DAVID D. OLIVER, complainant, sworn.

Examined by Mr. RUSSELL:

I am the complainant in this cross-bill. At present I live in Alpena; have lived there about a year and a half; before that I lived at Ossineke, Alpena county, Michigan; that is about 12 miles from Alpena; I think by the Lake Shore survey it lacks a quarter of a mile of being 12 miles to the dock at Alpena. Ossineke is at the mouth of Devil river. Alpena is at the mouth of Thunder Bay river. Devil river empties into Thunder Bay 12 miles south of Alpena; that is nearly 12 miles south and one mile east, I think. I moved to Ossineke in the fall of '47, I think in September, and resided there until I moved to Alpena. When I went to Ossineke I bought of Jonathan Burch.

Q. Who built the mill there?

A. I understood Jonathan Burch, Anson, Eldred & Co.

Q. What was your occupation during all that time?

A. My occupation has been lumbering, surveying, locating, buying and selling pine lands and other lands.

3052 Q. What persons were associated with you in business in the fall and winter of '66 & '67?

A. George W. Hawkins, from November, I think, until January, and then Robert B. Oliver, and both of them from that time until in May or June, '67.

Q. What other persons then became associated with you in business?

A. Not any until the fall of '67; I was by myself during the interim from June until the fall of '67.

Q. You conducted the business alone from June, '67, until what month in the fall of '67?

A. I suppose until the 15th of October; but I was alone in the business until the 16th of November, when the articles of copartnership were made between George J. Robinson and myself.

Q. At that time what contracts were pending in regard to the delivery of lumber from the Devil river property; that is, what parties were contractees?

A. A contract was made, I think, on the twentieth day of November, '66, between David D. Oliver and Geo. W. Hawkins, of one part, and Calvin Haines of the other part, for the purchase and sale of about a million and a half of lumber; Haines advanced five thousand dollars on that contract; the liquidated damages in that contract were five thousand dollars; on the 12th or 13th of July, '67, there was a modification of that contract, reducing the amount of lumber one-half, and also the liquidated damages one-half, and

Haines advanced four thousand dollars; this (producing a paper) is the contract with the modifications.

(The contract and modifications are offered in evi[dence], marked "Exhibit A.")

3053 Q. Describe the E. & G. R. Haines contract.

A. There was a contract made with E. & G. R. Haines on the 14th of January, I think, '67; David D. Oliver, Geo. W. Hawkins, and Robert B. Oliver, of one part, and Emmer Haines and Geo. R. Haines, of the other part, for the purchase and delivery of two million feet of lumber; they advanced at that time five thousand dollars; they were to advance a thousand dollars in the spring, which they did; and then in July, somewhere about the 12th or 13th, there was a modification of the contract made, and they advanced four thousand dollars more.

(The contract is produced, and marked "Exhibit B.")

Securities were given for these advances in the performances of the contract; I gave an individual mortgage upon the property in Alpena county, and Geo. W. Hawkins gave his individual mortgage upon two farms in the counties of Erie and Niagara, State of New York; my mortgage ran to C. Haines, and E. & G. R. Haines, and that of Geo. W. Hawkins ran to C. Haines and E. & G. R. Haines.

Q. State whether the mortgages given by you to C. Haines and E. and G. R. Haines, covered the same property, or a part of the same property, which was subject to a purchase-money mortgage to Cunningham, Hunt, and Eschleman?

A. They did, both of them; I think that the C. Haines mortgage covered considerable of the property mortgaged to Cunningham, Hunt, and Eschleman, and some of the E. and G. R. Haines; the E. and G. R. Haines mortgage covered outside property as well.

3054 Q. State whether you gave them any further security?

A. In July, and after those modifications were made, I gave them a chattel mortgage on, I think, two and a half million of logs in Devil river and on the bank as further security for the eight thousand dollars. I owned those lands set forth in schedules A and B, attached to the cross-bills. There was about fifteen thousand acres in towns. 28 and 29 north, range 8 east. I purchased the mill and a hundred and thirty-three acres and some hundredths of Jonathan Burch, and some of the lands I bought of the Government in my own name, and many of them through David Preston; and five thousand six hundred and twenty-six acres I bought of Cunningham, Hunt & Eschleman for thirty-five thousand dollars ($35,000). I did not make any down payments. They told me all they wanted was the interest of their money and to keep their mortgage well secured, and I could have my own time. They told me so at all times, from that time up to and including the meeting at Cunningham's office, in the city of Buffalo, on the 3d of October, '68.

Q. What security did you give them?

A. I gave them a mortgage on the lands purchased of them and about six thousand acres of the lands in the same towns.

Q. How many lands in the counties of Alpena and Alcona were you seized in fee of, and were you in possession of, besides the lands covered by the mortgage to Cunningham, Hunt and Eschlem n in '67?

A. About six thousand five hundred acres.

3055 Q. State whether some of the lands in Schedule B were held by David Preston, and produce the Preston contract, if you have it?

A. They were held by David Preston as security for the sum of about eight thousand dollars. The paper which I now produce is a true copy of the contract, and is in my own handwriting.

(The copy of the contract is marked Exhibit C.)

Objected to by Mr. Duffield.

During the winter of 1866 and 1867 I think there was about two million and a half of saw-logs cut and hauled at Ossineke and nine hundred thousand cut and hauled in the summer. About three hundred acres of land were cut over in the winter.

Q. Were all the lands which you have mentioned in towns. 28 and 29, range 8 east, pine lands?

A. They had been pine lands; some of them cut over. I think there was between fifteen and sixteen thousand acres in those towns.

Q. In November, '67, how many acres had been cut over?

A. I can't tell accurately, but I think about twenty-five hundred acres. I made an estimate in the summer of '67 of the standing pine timber on those lands in towns. 28 and 29; I had been over different parts of the lands a number of times before. My estimate of the standing pine timber was over one hundred millions.

Q. During the summer of '67, what mill was there at Ossineke running?

A. The water mill; it was built in the fall of '45.

Q. What was its condition then?

3056 A. Some part of the frame had been much decayed, but all the timber that was bad was taken out two years before, and the flume and all the running-gear was made new and in good condition. The mill ran one five-foot circular saw, one upright sash saw, a butting saw, edger, and two lath saws, and cut from twelve to twenty-five thousand per day, and about eight thousand lath. Some seasons we could run one saw all the time; some seasons the mill was idle two months in the summer; on an average we had water to run about one-half the time during the year; there were two or three seasons that I ran the mill nearly all the winter. Some time in the winter of '66 I became acquainted with Henry M. Robinson; he was then in business with one James B. Wayne.

Q. What transactions did you have with them in the winter of '66 and '67?

A. I made a contract for machinery for the steam mill. I think the contract was for sixteen thousand dollars, but afterwards there was extra work to the amount of something like a thousand dollars. I think it was in September, '67, that I had an interview with him in regard to the property at Ossineke; he took me into the engine-

room to see a portable engine, and while there he said that his foreman, who put up the machinery at Ossineke, had given a good report about the property, and that he would like to purchase an interest in there; that was nearly all that was said, except that I told him that if I concluded to sell I would give him a chance. I did afterward make a sale.

Q. When?

3057 Mr. DUFFIELD: I object to all this testimony about Henry M. Robinson as irrelevant.

A. It was all the way along, from about the 15th of October until the consummation of the papers, the 16th of November, '67. I wrote Mr. Robinson from Lockport, stating that I would sell one-quarter interest of the real property for thirty-five thousand dollars, and that if he entered in with the proposition he should meet me—I think it was on the 15th of October—at Lockport, N. Y., at the Judson House.

Mr. DUFFIELD: I object to any contents of the letter being given, the letter itself not being here.

I came a little before the 15th to Detroit, and I met Mr. Robinson on the street. He said he was glad to meet me. He entertained the proposition. He was preparing to meet me then in Lockport. He was then dissolving partnership with Mr. Wayne, and they would put the property up at auction, and if to protect himself he was obliged to bid in the property, then he would not go in with me, but if it should turn out that Mr. Wayne bid the property in, then he would have about twenty thousand dollars in money. He had some eight thousand dollars of railroad bonds, and he would have a mortgage of about twelve thousand dollars, and he would come up and look at the property, and buy it, he thought. That was the 15th of October, '67. I first became acquainted with George J. Robinson, I think, about the 17th of October, '67, two days after this conversation. His father introduced me. He was then
3058 keeping books for a firm on Jefferson avenue. The Robinsons came up to Ossineke about the 10th, I think, of November, '67, and spent one day in the woods looking over the pine lands and one day, I think, about the mill and store, and they agreed to meet me here in Detroit as soon as we could get down and have the papers drawn.

Q. With whom did you enter into partnership?

A. The papers were drawn in the name of George J. Robinson, but the partnership was made with Henry M. Robinson. I asked Mr. Robinson why he didn't have his name in the firm; I thought I could do business with him better than with his son. He said he had a wife in Detroit, with whom he did not live, although not divorced, and if he should buy property in his own name it would be embarrassed by her in the event of a sale.

(A copy of the articles of copartnership are produced and marked "Exhibit C.")

Mr. Duffield objects to the copy being produced.

WITNESS: I know it to be a true copy; it is made by me in my own handwriting.

Q. State the facts in regard to this clause in the articles: "Said Robinson is to assume and have the principal charge of said business."

A. I didn't understand at the time that that clause was in it. I did not read the articles of copartnership before signing it. Henry M. Robinson paid the money for the property.

Q. Did he furnish all or a part?

A. I understood that he furnished all of it. He paid three
3059 thousand three hundred dollars before the papers were drawn. It was some two days, I think, before the papers were made. The circumstances were, that after he had talked the matter over, and I had given him a statement of the matter, he said it was all right. The purchase was for real estate, and the next morning after giving me the check he came to me and said that his son had been looking over the matter; that he found they had paid all the money they had, and they would not be able to pay for one-quarter of the personal property, and he was a little fast in paying that money at the time, and wanted to know if I had used the check, requesting me not to say anything *it* to his son about it; that they couldn't go any farther if they had to pay any more money. The balance was to be paid by a mortgage of twenty thousand dollars. It was to be paid out of the proceeds of the mill, they paying the interest annually.

Q. A mortgage of $20,000 on their interest, do you mean, in the mill?

A. They gave me a mortgage of $20,000 upon their quarter interest. This balance was never paid.

Q. If the mortgage was twenty thousand dollars, and they paid thirty-three hundred dollars, what became of the difference between that and thirty-five thousand dollars, the purchase-price?

A. There was five thousand dollars paid as my part of the working capital, and four thousand dollars more was put in that was to be paid Preston on his lands. There was a certain amount that was checked to me, but I forget just how much; three thousand
3060 dollars, I think. They paid Wayne and took a transfer of a part of his mortgage to themselves, and the balance was put into the concern to buy supplies. I gave my individual check to Brady for twenty-five hundred dollars' worth of supplies, and a check to Craig, I think, for some supplies.

Q. And they purchased the balance of the supplies with the balance of the money due, did they?

A. It was all put in for supplies, but the exact operation I cannot tell. At the time that H. M. Robinson came to me in regard to the check I told him I would see about the personal property, and I would put the property in without his paying any more money. I thought I would look the matter over, and the next day I told him I would put so much of the property as would be his share of it, and they might go along without paying any more money.

Q. What debts were assumed by the company—what outstanding accounts?

Mr. DUFFIELD: I object to any question as to anything embraced in the articles of copartnership between them. This should be shown by the articles of copartnership.

WITNESS: All the running book account was to be transferred to the company's books. The company's books were opened by an inventory that was taken at Ossineke in the fall of '67 by order of George J. Robinson. The accounts were transferred as agreed.

Q. Is the actual date of the transaction given in the partnership articles?

A. It is not. It was made on the 16th of November, I think,
3061 and dated back to the 15th of October, 1867, because it was agreed between H. M. Robinson and myself at that time that if he bought in the copartnership should commence at that time. Mr. Duffield drew the articles. When all the transfers had been made upon the new books of the company and the supply account had been settled I had a credit of a little over $11,000 on the company's books. I think about twenty-eight thousand dollars' worth of supplies were furnished that fall after the formation of the partnership; about eighteen thousand dollars, I think, for cash. I paid in the neighborhood of twelve thousand dollars of the cash.

Q. In the winter of 1867–'68, how many logging camps had the firm of Oliver & Robinson?

A. They had four besides their own there. They all got out, I think, about eight million of logs; it appears to me it was either over a hundred or two thousand, or less than that. We paid $4 a thousand to cut, haul, and run down to the mill. Logs were worth at the mill $7 or $8. Stumpage was worth at Ossineke in the spring of '68 from $2 to $4 a thousand. The winter of '68 some twelve hundred thousand feet of lumber was sawed.

Q. By what mill?

A. The steam mill. It was new at that time; had four boilers set, ran one engine, two large circular saws, one edger, and a butting saw. I left Ossineke during the winter of '68—I think about the middle of January. I went to make some contracts for the company, and also to settle some matters with Haineses. I made one contract
with C. Haines & Co. for the sale of lumber on commission.
3062 I received no advances on that contract. Then I made another for the firm of O. & R. with C. Haines & Co., for the purchase and delivery of half a million feet of lumber, and I received five thousand dollars advanced on it. Henry M. Robinson guaranteed that contract. There was no security, except his guarantee, that I know of. I settled up the other contracts, the old matter between E. and G. R. Haines and myself and George W. Hawkins, by extensions, by the contract with C. Haines, in consideration of the new contract. I met Henry M. Robinson when I was absent.

Q. When he guaranteed the contract what other business did you transact together?

A. The other business was principally in his showing me con-

tracts he had made with different parties for the sale of lumber. I don't recollect any contract that he showed me particularly, except one with Stephen Miller, of Ogdensburg. He said he was making a contract with the Illinois Central railroad, and, I think, with the Milwaukee road.

Q. State in what capacity you recognized him in relation to the firm.

A. Nominally he was agent, but I regarded him as principal.

(A business card is produced, which is marked Exhibit "E.")

WITNESS: This card (Exhibit E) was issued about the first of February, 1868. H. M. Robinson stated to me that he had sent five hundred dollars of his own money to Alpena, but did not state that he had drawn anything on the contract.

3063 Q. Had he, as a matter of fact?

A. He had.

Q. How much?

A. Five hundred dollars upon the Stephen Miller contract.

Q. Did they receive any other money upon that contract?

A. They received in the spring a thousand dollars. They claimed that money was their own private funds. Both Henry M. and George J. Robinson claimed that. The thousand dollars they afterwards credited to the company, I think; but the five hundred dollars has never been spoken of or intimated, or credited on the books. It had not been up to June 9th, '68. It was received, I think, and in February.

Q. State by whose assent and direction H. M. Robinson held forth as agent of the concern?

A. He was held forth by George J. Robinson and David D. Oliver until about the middle of May, or the time that the water mill was shut down. Henry M. Robinson came to Ossineke in the winter of '68 to see how we were getting along, and to see about the contracts he had made.

Q. With whom did you act as principal in the business?

A. With Henry M. Robinson. When I returned from Buffalo I showed to George J. Robinson the contract of Calvin, Haines & Co. for the selling of lumber on commission, and the other for the purchase and sale of half a million feet of lumber. After keeping them a short time, he returned them with his protest upon them.

3064 Q. When did George J. Robinson leave Ossineke after that, and upon what business?

A. George J. Robinson went away from Ossineke about the last of March, I think it was. He came to Detroit. During his absence he gave a chattel mortgage to the Haines' companies in the name of Oliver and Robinson. He gave a mortgage on two and a half million, I think, of pine saw-logs belonging to the company.

Q. To secure what?

A. I can hardly say.

Q. Was it done with your concurrence?

A. It was not. My friendly relations with George J. Robinson ceased about the 20th of April, '68, I think. I could hardly say

what was the occasion of it; they claimed that I had misrepresented the property, although they were not judges of what the property was worth, or whether it was misrepresented or not—they had never been over the property, either of them.

Q. What time in the spring did H. M. Robinson come to Ossineke?

A. I think he came there about the middle of April. I understood that he came to assist me in the business—I so accepted him, and he participated in the management of the business.

Q. How much lumber did you ship up to the first of June, '68, from the time of the formation of the partnership?

A. Two million two hundred and sixty thousand seven hundred and eight (2,260,708).

Q. How much money had been sent to Ossineke, and how
3065 much did the firm of Oliver & Robinson receive of the proceeds?

A. I couldn't say how much was appropriated to the debts of Oliver & Robinson; three thousand dollars was all that came to Ossineke. Henry M. and George J. Robinson both claimed the money. It belonged to the firm of Oliver & Robinson.

Q. Who actually had possession of the money?

A. George J. and Henry M. Robinson or their agents. I permitted this because I had entrusted all the funds of the concern to George J. Robinson, and I had no means to protect myself. I had individual debts due, and becoming due, and there were debts due and becoming due against the firm, and it was imperative that the mill should run and not stop, to pay them. I forget the exact inventoried value of the goods in the store in the fall of '67, but I think it was eight thousand and some seven hundred dollars. Somewhere about two million of old logs were wintered over, during the winter of '67 and '68; they were worth seven dollars and a half a thousand.

Q. When did you cease to have control of the business, and how?

A. I went away to Saginaw to see about some machinery, on the 11th of May, and I came back on the 19th; and, when I got back, I found that they had shut down the water mill, that they had dismissed all the men that were in my favor, and all my orders had been countermanded; that Henry M. Robinson then declared he had nothing to do with the business at all, and George B. Melville assumed to have entire control over the matter, under a power
3066 of attorney from Henry M. Robinson and George J. Robinson, and, whenever I would set a man to work, they would go and take him away.

Q. Were you permitted to have access to, or control of, the books, or any part of the property?

A. Not at all. And this exclusion from possession has continued ever since.

Q. Can you give a statement of what the firm of Oliver & Robinson owed at the time you were excluded?

A. Twenty-eight thousand nine hundred and twenty-five dollars

and seven cents ($28,925.07)—that was the entire indebtedness of the firm of Oliver & Robinson.

Q. What were the receipts for lumber, and the amounts due and to be received at that time?

A. The total amount received at that time was seventeen thousand eight hundred and eighty-two dollars and nine cents ($17,882.09). The bills receivable for lumber were eleven thousand dollars ($11,000).

Q. What were your personal liabilities at that time?

A. About eighty-eight thousand four hundred and eleven dollars and twenty-three cents.

Q. What amount of real and personal property had you as assets?

A. Two hundred and seventy-two thousand dollars.

Q. After this, did the Robinsons offer to buy the property at Devil river of you?

A. They did. They offered to pay all the encumbrances and my floating debts, and give me ten thousand dollars.

Q. By Mr. DUFFIELD: Do you mean the eighty-eight thousand dollars as the floating debts?

3067 A. That includes the floating debts, mortgages and all. This offer was made for my property contained in the two towns. 28 and 29.

Q. Did you make any proposition to any persons to take the property in trust; if so, when?

A. I made a proposition to Cunningham and Hunt on the 9th of June, 1868.

Objected to as irrelevant.

WITNESS: The proposition was in writing, and that written proposition was conveyed to Cunningham and Hunt by George W. Hawkins.

This is the proposition in writing which was made to them, and these are the exhibits (producing them).

(The written proposition and accompanying exhibits are marked "Exhibit F.")

WITNESS: The proposition is in my own handwriting, and the statements of facts set forth in that proposition to Cunningham and Hunt, in the body of the proposition and in the exhibits, at that time, were true; they were taken by actual observation on the premises. I understood by Hawkins when he came back that they declined to accept, but turned it over to E. and G. R. and C. Haines & Co., and they were coming up in a few days and would accept my proposition if I would make it to them.

Q. Did Cunningham and Hunt subsequently accept that proposition?

A. They did, through Henry S. Cunningham, about from
3068 the first to the eighth of September, 1868; Mr. Hawkins, I think, was absent about two weeks; after his return, Emor Haines and his son came to Ossineke on the part of E. and G. R. Haines, and Philip M. Ranney came on the part of C. Haines & Co.;

I supposed when they came there it was to accept my proposition, but it turned out they would not accept my proposition, and they offered to buy the property; offered me the same price that was offered by the Robinsons through Melville; there was no agreement made with them there; I think that Geo. W. Hawkins, Geo. J. Robinson, and myself went away with them; I went to Buffalo, and from there to Hunt's, and met, I think, all the mortgagees at Hunt's; about the middle of July I think it was; there was no agreement made there, but afterwards there was an agreement made at Lockport, N. Y.

Q. What was talked over at Hunt's?

Mr. DUFFIELD: I object to any talking over, if there was no agreement.

A. There was a verbal agreement made at Hunt's between the Haineses and myself.

Q. Which Haineses?

A. Calvin Haines and, I think, Geo. R. Haines was present, and Hunt and Eschleman; Hunt and Eschleman were parties to that agreement, inasmuch as their mortgage was always in the way, and parties buying the property had to understand from them what they would do with their mortgage, and they understood there they would wait for their mortgage by being secured and having their interest.

3069 Q. Was this agreement reduced to writing subsequently?

A. Not as agreed upon there; the Haineses agreed to give me ten thousand dollars, and I retain the twenty thousand dollar mortgage that I had against Robinson. The written agreement was made, I think, on the 20th of July, '68, at the office of C. Haines & Co., in Lockport; Geo. J. Robinson drew the agreement; he was there; his name was not in the agreement, but he had an interest in the agreement; the matter was talked over when the Haineses were at Ossineke, and they had agreed upon the amount that they would give me, and when we got to Lockport and saw Ranney he refused to allow me to retain the twenty thousand dollar mortgage without the consent of Robinson, and Ranney telegraphed to Robinson, saying that, "Oliver will sell as we talked—meet us here."

Q. Whether Geo. J. Robinson had an interest, and what it was—was he to share in the property with the Haineses, or not?

A. So I understand it; that is the agreement, the original attached to Mr. Melville's testimony; I know the signatures to be genuine; this agreement was to expire on the 5th of September, '68.

Q. Was that agreement ever carried out?

A. It was not; before that contract ran out Henry S. Cunningham came to Ossineke; I am not able to give the exact date of his coming, but I think it was the first of September or the last of August.

Q. What passed between you and Cunningham?

3070 A. I transferred my property to him in trust; the trust was not different in any particular, that I remember, from

that which was set forth by me in the written proposition made by me to Cunningham and Hunt on the 9th of June.

Q. State whether reference was had to that proposition in the interview between you and Cunningham when he came there.

A. It was mentioned several times.

Q. What, if anything, did Cunningham say in regard to Hunt and himself having received the proposition from Hawkins, or any talk with Hawkins about it?

A. He said that at the time they were not lumbermen, and they supposed the Haineses were in the lumber business, and they could take hold of it much better than they could, and they turned it over to them, but inasmuch as they had not accepted it—hadn't done anything—rather than it should go into their hands they would accept it.

Q. State what the terms of the trust were.

A. He was to take the property and manage it through an irrevocable agency by George W. Hawkins, and he was to run the property until all my debts were paid, and then was to deed back to me one-half of the property, and one-quarter interest was to be deeded to George W. Hawkins, who was to pay me thirty-five thousand dollars, and Hawkins was to have the proceeds of one-quarter for his services during the time. All the proceeds were to go to pay my debts, but the proceeds of the quarter interest should go to pay Hawkins' quarter interest.

Q. What debts were to be paid by Cunningham?

3071 A. The Cunningham, Hunt, and Eschleman mortgage, the Wayne mortgage, the Calvin Haines mortgage, the mortgage to E. and G. R. Haines, the mortgage to James Hill, of Saginaw, and about six thousand dollars of floating debts, and all the obligations of the firm of Oliver & Robinson.

Cunningham agreed to assume my place in the partnership, and he told me he had seen Robinson, and that Robinson was willing he should step into my place.

Q. What was agreed between you in regard to the money advances in the business?

A. He agreed to make the necessary advances to carry on the business, and told me at the time he would not undertake that unless he knew who his backers were; that he was assisted by Hunt and Eschleman.

Q. What was agreed between you and Cunningham in regard to the time of payment of the thirty-five thousand dollar mortgage?

A. Cunningham said—says he: "We have a large interest here, and we would rather take hold of this than see it go into the hands of the Haineses, and all we want is the interest on the mortgage, and to keep the securities good. Now, if we go on and cut the timber off of all those lands and pay off the other indebtedness first, then we will diminish our securities, and if you can secure us with anything else, we will go on and pay all the other debts first." I told him I had outside property, about six thousand acres, that I would put into his hands, and it was for no other reason that it was put into his hands. It was to secure him and make his securities

good that he should go and pay the other debts and leave
3072 his mortgage to the last, and that he agreed to do. I put the outside property, about six thousand acres, into his hands as further security.

Q. Did he inform you, or did you know from any source, that an assignment had been made by Cunningham to Hunt and Eschelman of his interest in the money-purchase mortgage at the time when you executed your deed to Cunningham or at any time while Cunningham was in Ossineke upon that business?

A. I had no intimation of that fact. I think it was about the middle of November, '68, when I first discovered that he had made any such transfer.

Q. State in what character Cunningham claimed to be dealing with you, and on behalf of whom besides himself?

Mr. Duffield objects on the ground that the question should be as to facts, and not as to conclusions.

A. He claimed to be dealing with me as one of the creditors or mortgagees, and he certainly was dealing on behalf of two of them, Hunt and Eschelman.

Q. Have you a certified copy of the deed which you gave him at that time?

A. There were three deeds.

(The deeds are produced and marked respectively Exhibits G, H, and I.)

Exhibit G is a warranty deed, and conveys an undivided three-quarters of Olivers, in towns. 28 and 29.

Exhibit H is a warranty deed, conveying the entire of the outside lands.

Exhibit I is a quit-claim deed, conveying certain additional outside lands.

3073 These deeds, all of them, purport to be executed and acknowledged on the third day of September, '68, but I think they were acknowledged on the fourth.

Q. State what you did with the contract for the Preston lands?

A. I assigned that to Cunningham.

Q. Who has the original of the Preston contract and the assignment thereupon to Cunningham?

A. I suppose Henry S. Cunningham; it was delivered to him.

(The assignment by Oliver to Cunningham of the Preston contract is produced and marked Exhibit J.)

I also transferred and delivered to Cunningham some personal property at the same time that I executed and delivered the deeds of the real property. I have a copy of the bill of sale.

(The copy of the bill of sale is produced and marked Exhibit K.)

Q. What personal property was actually delivered with the bill of sale?

A. All the property was mentioned, and I formally delivered the lumber on the dock, and the goods and store, I think. I went down

with him on the dock and showed him the lumber, and told him I made a delivery of the property to him. The twenty thousand dollar Robinson mortgage I assigned to Cunningham. This is a true copy of the assignment made by me at the time I made the transfer.

(The copy is marked Exhibit L, and offered in evidence.)

Objected to by Mr. Duffield.

3074 There was no consideration paid me by Mr. Cunningham for all these transfers. Mr. Cunningham appointed Mr. Hawkins, made a little formality about it, called some witnesses, and stated to them that he had purchased the property and some effects from me, and he put Mr. Hawkins in the place to look after the business in his absence, and that he intended to run the property long enough to pay the debts and fix matters up. I think that Joseph Reed, Samuel Ellsworth, Reuben E. Gallup, George W. Hawkins, my wife, and myself were present when he made that statement. It was the 4th day of September, 1868, I think. About that time I received a note from George J. Robinson. This is the note (producing it). It is dated the 5th, I think; and I think I received it on the evening of the same day.

(The note is offered in evidence, marked Exhibit M.)

Q. State what the entry was on the book of the firm to which he called your attention in that note?

A. He wrote across the day-book, on page 146, September 5th, '68: "In consequence of David D. Oliver's recorded sale to Henry S. Cunningham, his personal credit is discontinued on these books until it is made known to me how such credits are to be provided for, and whether they are authorized by said Cunningham." He afterward made another entry on the book on the 11th: "Know all whom it may concern, that there appears on record, a sale by David D. Oliver of his interest in the copartnership of Oliver & Robinson, and that the subscriber is not advised of its legal
3075 bearing on himself or said firm, and he saves and reserves to himself all his legal rights. And be it further known that he will retire from said firm and its business, as provided for in its articles of copartnership, to which reference is made. (Signed) George J. Robinson." That is made on page 147 of the day-book, September 11th, '68.

Q. By Mr. DUFFIELD: You have not the original entries here, have you?

A. I have not.

Mr. DUFFIELD: Then I object to the introduction of this matter.

WITNESS: I know that these are true copies of the entries. The day-book is in possession of George J. Robinson, or parties connected with him. I can't say what time Cunningham left there, but I think he left on the 7th. I went with him. While below I called, in company with Henry S. Cunningham, on John W. McMath, of Bay City. I requested Mr. McMath to draw up some papers, a statement of the Cunningham trust, the agreement showing what Cunningham was

to do; I counseled him in regard to the floating debts, the bearing of my transfer upon the floating debts. Cunningham was not present all the time.

Q. What was done when you and he were there together. How came he to go there with you?

A. I asked him to, I suppose, or it was a mutual understanding.

3076 Mr. McMath drew up, or partly drew up, a paper in reference to the trust. Mr. Cunningham did not sign it; he said it was not necessary at that time, as I had some expectation of selling the property; and if I did while I was down it was not necessary to make the writings. Mr. Hawkins remained in charge at Ossineke, I think, about ten days. I was there when he left.

Q. Why did he leave and where did he go?

A. He received a letter from George J. Robinson stating that he did not recognize him as an agent, I think, and advised him to see Cunningham; and another reason was the Robinsons were shipping the lumber in the name of H. M. Robinson, and he wished to see why that was done.

Q. Where did Hawkins go?

A. He went to Buffalo.

Q. State whether the bills of lading dated September 9th, October 9th, and October 10th are such bills or copies of shipments made at that time.

A. The one dated the 9th of September I know to be a true copy, and the others I don't know, but I believe to be true copies; they are in the handwriting of Reuben E. Gallup.

(They are marked collectively "Exhibit N."

WITNESS: I think it was about a week after Hawkins left that I received a telegram from Cunningham to come down; I think it was about the last days of September, 1868; I believe that I have the telegram.

Defendants' counsel requests that the telegram be produced or that the testimony be stricken out.

3077 WITNESS: I went to Buffalo and arrived there about the last of September, 1868; When I got there I saw Henry S. Cunningham; he said he wanted I should come down and give my consent to the sale of that property; that he would not go on with the trust; he would not have anything to do with it; that they could raise no money and that I had better sell the property, and if I let it run down and stop it would not bring me as much as if I sold.

Q. Did he actually use the word "trust"?

A. I think he did; I asked him who would buy the property; he said Robinson, Calvin Haines, and Philip M. Ranney; I told him they were the same parties that were in the agreement at Lockport; that I would sell the property just as I offered it there, and asked him why they did not accept that agreement; he said they would not pay me the $10,000, nor would they pay me but one-half of the E. and G. R. Haines mortgage, but advised me to take it.

Q. What arrangement was made in regard to meeting the parties, and what parties?

A. He wanted I should meet all the mortgagees—Cunningham, Hunt, Calvin Haines, Eschleman, Philip N. Ranney, George J. and Henry M. Robinson, and George W. Hawkins—and see what arrangement could be come at; Cunningham's office was appointed for the meeting in Buffalo, on or about the second or third of October, 1868, I think; we met and those parties were all present; the first thing done at that meeting the Robinsons and Hawkins and Ranney talked together, and Cunningham and Hunt & Eschleman talked together; I had but little to say in the matter, and after they had talked the affair over they all came to me and said they had come to the conclusion to do all there was in the Lockport
3078 agreement, except paying me the $10,000, and paying me the whole of the E. and G. R. Haines mortgage—that they would only pay one-half; that if I had a mind to accept that they would go over to Williams' office and there have writings drawn.

Q. Did you agree upon what should be in those writings; and, if so, what?

A. After talking the matter over with Hawkins, and making up my mind that they were bound to skin me—after I had made up my mind they were bound to have it their own way—I went over to Williams' office.

Q. I want to know if you went into an agreement upon the particulars of the writings while you were at Cunningham's office.

A. I think that after we got to Williams' office the headings of the different stipulations were put down in pencil. The first part was that I was to have thirty days to sell the property to other parties, if I could; and, at the end of thirty days, if I could not sell the property, then the buyers were to pay, or secure to be paid, and cancel and deliver up, the Cunningham, Hunt, and Eschleman mortgage, the mortgage to James B. Wayne, and the mortgage to E. Haines & Co., and their claims, which contained a contract that I made in February, '68, and half of the E. & G. R. Haines mortgage; to pay James H. Hill, of Saginaw, his claim of about $3,000, and to release and discharge Geo. W. Hawkins from all his liabilities growing out of his business with me, and to pay all the claims of the firm of Oliver & Robinson; and upon their doing this, then Cunningham would be permitted to deed to Robinson, Haines,
3079 and Ranney all the lands deeded to him by me and David Preston, in towns. 28 and 29 north, of range 8 east; and he was to deed back to me all the lands outside of those towns.

Q. Was the contract drawn in your presence?

A. No, sir; it was not. I had to go away that evening to a place beyond Olean. I wanted to see a man to sell him the property. The meeting at Williams' office was the same day as the meeting at Cunningham's office. This contract had been drawn, I think, about two weeks before I saw it in Williams' office.

Q. Were you absent from Buffalo in the interval?

A. I think I was. I can't say whether I came back there or went somewhere else, or was gone that length of time. When I went to

Williams' office, I requested a copy, and the reply was, that I could not see it nor read it, or have a copy, without Mr. Cunningham's written consent. Mr. Williams told me this. I then went and got an order from Mr. Cunningham to permit me to read the agreement. I took it to Mr. Williams and then got the agreement to read. I did not get a copy. Mr. Cunningham's order did not cover having a copy. I think the agreement was signed by Robinson, Haines, and Ranney, and Henry S. Cunningham. I saw the first copy of the agreement about the 10th of June, in the hands of H. B. Brown, my attorney. I don't know how he got it.

Q. State whether this document now produced is the copy given you by Mr. Brown.

A. It is. I supposed it to be a true copy, because I com-
3080 pared it with the one that he had; that is the best and only means I have of producing a copy of the Buffalo agreement. I never authorized Henry S. Cunningham to sign that agreement, or any such agreement. I never agreed to that agreement, or any such agreement. Upon being suffered to read it, I asked Mr. Cunningham why it was not drawn in accordance with the stipulations. I think it was the next day after I read it, I was in the office again, and Mr. Cunningham was there, and I wished to see the agreement and read it over, and I did so, and I complained to him about it, and he became indignant and said it was the best he could do, and I had no right to complain, when he was doing for me all that he could. There was nothing said at Cunningham's office or Williams' office in regard to Cunningham having assigned his interest in the mortgage to Hunt and Eschleman. I did not then know of the fact, nor did I know until some time about the middle of the month. When I learned that C. Haines & Co. had assigned their mortgage to Hunt & Eschleman, I asked Cunningham why that was done, when they agreed to cancel that mortgage at the expiration of thirty days. He said that it was thought if there should be any rip up about it, the mortgage would be out of their hands, and that he had done the same thing with regard to his mortgage. He told me that in his office at Buffalo, I think, about the middle of October, '68. The agreement signed by Cunningham disagreed from the contract as actually made, in almost everything, but principally in not specifying that the buyers should pay or secure to be paid, cancel and deliver up, the obli-
gations and debts at the expiration of thirty days; and in
3081 regard to the conveyance of the C. Haines mortgage, and the mortgage of Hawkins, and the assignment of those mortgages to Hunt, and the agreement that Robinson, Haines and Ranney should pay $4,000 to Garrett B. Hunt, in lieu of releasing his mortgage and obligations.

Q. You say the Cunningham, Hunt, and Eschleman mortgage was included in the agreement to pay off all the mortgages in 30 days.

A. Yes, sir. It was an understood thing between them that they were not to pay the Cunningham, Hunt, and Eschleman mortgage at the time to them, but they had an understanding with them that

I should be entirely relieved of the mortgage. That is what I understood with them, but not any agreement with me in regard to it.

Q. At the meeting at Hunt's in June, and at the meeting at Cunningham's in October, what did Eschleman, Hunt, and Cunningham agree with regard to forbearing the collection of their own mortgage?

A. They agreed with all the parties that I agreed to sell to—to wait for the pay of their mortgage as long as they wished, if they gave them ample security, and paid their interests. At the time Cunningham took the trust, he agreed that the collection of the Hunt, Cunningham, and Eschleman mortgage should be deferred until the last, if I put the outside property in his hands to keep the security good, which I did. None of the mortgages and debts which were to be paid to the buyers within thirty days, as a condition of their receiving the deed from Cunningham, have been paid to my knowledge. Some of them I know were not paid. Nevertheless, Cunningham conveyed to the buyers.

3082 Q. Have you a copy of the deed?

A. I have; it is dated on the 3d of October, the same date as the agreement, and it is acknowledged on the 13th of November, 1868; it conveys three-quarters of the land in the towns. 28 and 29 north, range 8 east.

Q. Do you know the signature of Mr. Hopp to all these exhibits?

A. I do; he is register of deeds; the signatures are genuine.

(Certified copy of deed marked Exhibit P.)

Q. What did Cunningham do with the personal property received by him from you?

A. I can't say what he did with it; they have had it among them and used it up. I don't know what he did with the Geo. J. Robinson mortgage assigned to him by me; in regard to the Preston mortgage, assigned by me to him, he paid Preston and received a deed from him; I think the deed run to Henry S. Cunningham. The value of the real property which I conveyed to Mr. Cunningham in trust was $200,000, and the personal property about $70,000. The value of the mortgage which I conveyed in trust to Mr. Cunningham was $20,000. The Preston contract I include in the lands.

Q. Whom did Cunningham let into possession of this real and personal property?

A. Geo. J. Robinson, Calvin Haines, and Phillip N. Ranney; I can't say positive whether he continued in possession with them jointly; I know only from his own statements under oath, and from the report of others, and from those sources. It was from

3083 January, 1869, that he was with them jointly. I never received any purchase-money from any of these purchasers.

Q. Have they ever, up to this time, to your knowledge, performed any of the conditions of the contract to which you gave your consent at Cunningham's office in Buffalo, or have they paid, to your knowledge, any of the mortgages or liabilities which were to be paid as a condition of a sale by Cunningham to them?

A. Not any to my knowledge. After this Cunningham sale a copartnership was formed between those parties, under the name o

Robinson, Haines & Co. A number of copartnerships succeeded that. I have seen some papers signed George J. Robinson *et al.*, and seen books and other things marked "Ossineke M. Company;" I saw papers signed Cunningham, Robinson Haines & Co.; that is the way they sign their names now, I think.

Q. What do you know about the interest of Henry M. Robinson, Hunt, and Eschleman in the concern there?

A. As regards Henry M. Robinson, I know that he was a partner; all but the name in the firm. Henry M. Robinson is the only one of the defendants who has appeared at these examinations in this case; he attended the examination of Samuel Ellsworth.

Q. Do you know whether Hunt or Eschleman have taken any action in regard to the furnishing of supplies or machinery for the business being carried on since the sale by Cunningham?

A. Not of my own personal knowledge; I don't know only by hearsay whether Hunt or Eschelman ever visited Detroit on
3084 such business since the sale by Cunningham; subsequent to the sale by Cunningham I received letters from Robinson, C. Haines & Co., and two from Garrett B. Hunt. The letter from Robinson, C. Haines & Co. I believe to be in the writing of Phillip Ranney.

(The letter of Robinson and C. Haines & Co., marked "Exhibit Q," and the letters from Hunt marked "R" and "S.")

WITNESS: I received those three letters since the cross-bill was filed.

Q. Have you been sued upon any of the debts agreed to be paid by the buyers within thirty days of the time of the agreement?

A. I have. James H. Hill, of Saginaw, sued his claim, and I had to pay $2,500, and Henry M. Robinson bought the Wayne mortgage and sued me in the Wayne circuit court and obtained judgment of some $10,000, and levied upon the outside property held by Cunningham, and which was to be deeded to me, and sold my interest in those lands; and Cunningham, Hunt, and Eschleman have commenced a foreclosure of their mortgage—a suit which I am now fighting.

Q. Have you a copy of the docket entries of the judgment in the Wayne circuit?

A. I have (and the witness produces it). I compared it with the original.

(Marked "Exhibit T.")

Q. Have you been a county clerk yourself?

A. I have.

3085 Q. Did you make an agreement with Robinson, Haines, and Ranney at the time you were at Williams' office on the 3d of October, 1868?

A. I did. They supposed I had some lands in towns. 28 and 29 that I had not deeded to Cunningham, and might, perhaps, trouble them in running the logs, and the agreement was to the effect that if I had any lands in towns. 28 and 29 north, of range 8 east, that I

had not conveyed to Cunningham, I should quit-claim to them. I found nearly the same thing inserted in the Buffalo agreement. In accordance with that agreement I made a quit-claim deed to Robinson, Haines, and Ranney on the 12th of November, 1868, I think.

(Produces a copy, and it is marked "Exhibit U.")

Q. State whether this quit-claim deed of the 12th of November covers any of the lands conveyed by you to Cunningham on the 3d of September, or conveyed by Cunningham to Robinson, Haines & Ranney on the 13th of November.

A. I think not; it was not intended to cover any.

Q. Had you the title to any of these lands covered by the quit-claim deed of the 12th of November?

A. Not to my knowledge. I made "Exhibit U" because they requested to have it done. They made the deed themselves, and put in what they chose. I think George J. Robinson wrote it. The reason that I made the deed was that I was in Buffalo and began to feel the hand of oppression, and I wished Mr. Cunningham to deed me back some of the lands that I had deeded to him, and the lands that I wished him to deed back were among the Preston lands.

He told me he could not deed any of these lands until I
3086 made this quit claim to Robinson, Haines, and Ranney, for he was to hold those lands by his agreement with them until I should make this deed.

Q. State what Haines and Ranney did with your mortgage to them, and Haines' mortgage to them, instead of paying it.

A. They assigned it to Hunt, or, I think, to Hunt and Eschleman.

Q. State what Haines said about that assignment, and when he said it?

Mr. Duffield objects to anything that Haines said.

A. Calvin Haines told me that if they failed in this suit he would take the mortgage back; that he would not lose the mortgage; that Hunt & Eschleman would not clean him out. I have a copy of the assignment. It is dated November 30th.

(Produced, and marked "Exhibit V.")

Q. What was done with the Wayne mortgage?

A. They allowed Henry M. Robinson to sue it, as I stated before. It was assigned to him. E. & G. R. Haines sold the mortgage they held against me to Hunt, or to Hunt & Eschleman.

(It is produced, and marked "Exhibit W.")

Q. Do you know from any of the statements of Cunningham who procured these assignments to be made, and why?

A. I don't know that he said he had procured them to be assigned, but he said the reason why they were made was so that if there was any rip up they would not be in their hands, but would be in the hands of outside parties.

3087 Q. State whether the descriptions and valuations of the property at the bottom of page 1, the whole of page 2, and the top of page 3 of the cross-bill is just and true.

A. To the best of my knowledge.

Adjourned to August 26th.

AUGUST 26TH.

Q. Can you now produce the telegram of Cunningham to you, requesting you to come to Buffalo, which has been referred to in your testimony?

A. I have not been able to find it, and therefore cannot produce it.

Cross-examination by Mr. DUFFIELD:

I am told that I was born in Greene county, State of New York. From the time I was twelve years of age until I was 20 I lived in Erie county, State of New York; then, in 1836, I think, I went to Canada and stayed two years, and, I think, it was in the winter of 1838 I came to Michigan. I then went on the West Shore surveying, with Judge Burt; was there nearly a year; then came to Detroit, and I went into Alpena county, surveying for a man named Clawson. After that I was two years in the woods, trapping and looking lands, and in 1845 I came to Thunder Bay island, and went into a trade at Thunder Bay island, fishing; and in the summer of 1847 I purchased the Ossineke mill property of Jonathan Birch, and moved in the following September. I was never brought up
3088 to any trade. For a year or two before I bought those lands of Cunningham, Hunt & Eschleman my main business was looking out and surveying pine lands—buying and selling. At that that time most all the means I had were in pine lands.

Q. Did you have any money at that time; if so, how much?

A. I could not say how much—I think I had a thousand dollars. I had about 12,000 acres of land; it may not have been so many as that; part of them I had in fee, and part was in the name of David Preston. I think there were about 7,000 acres in Preston's name. I think there was none in any other name except my own, at that time. Those lands were then worth $8 an acre.

Q. Did you ever know of that sort of lands being sold at that time, for any such price?

A. There was no lands sold there at any price, excepting those I bought of Cunningham. I paid, I think it was, $6 an acre for those.

Q. Do you believe in a future state of rewards and punishments?

A. Ask me any questions in regard to the suit you choose. I will not answer any religious questions.

Q. Do you refuse to answer?

A. I can answer. It is not because I have any scruples about it, but I think it is impertinent.

Question repeated.

A. I do.

I do not believe in free love; I do believe in spiritualism.

Q. Do you not live in accordance with spiritualistic ideas, more or less?

3089 A. I decline to answer that.

Q. Do you not consult mediums and wizards, and women that peep and mutter in regard to things?

A. That is none of your business.

Q. Have you not consulted such oracles in connection with this suit?

A. I shall not answer that.

Q. Have you not retained counsel under what you conceive to be their guidance and counsel in this very matter?

A. I shall not answer anything they have told me, or what I have consulted, or who I have consulted.

Q. Have you not declared to various persons that you have so done?

A. I don't know but I have.

Q. Have you not declared that the spirit of Rufus Choate was directing and guiding you in the direction and management of this suit?

A. I don't know but I may.

Q. What have you said in respect to it?

A. I shall not answer.

Q. Was there not a written agreement between you and George J. Robinson in respect to your sale and contemplated partnership?

A. There was. That is a certified copy of it.

(Copy marked " Exhibit X. ")

Q. Did you not accept that agreement and those articles as settling your respective rights and obligations with George J. Robinson?

A. I did at that time.

3090 Q. Did you ever have any written agreement with Henry M. Robinson in connection with this business?

A. I never did.

Q. Was any written agreement or writing ever made between you and Cunningham, Hunt, and Eschleman, or any of them, altering the terms of your bond and mortgage to them, or the mode and manner of its payment?

A. I think not.

Q. Was there any such written agreement made by or between them, or any of them, and any other person to your knowledge, by which the terms of such bond and mortgage were altered or modified?

A. Not to my knowledge.

Q. Did you have a clear and unincumbered title to the 6,000 acres of land, in the counties of Alpena and Algonac, besides those mentioned in the mortgage?

A. I think I had. I am not able to tell what the titles were without looking at the deeds.

Q. Did you have a clear and unincumbered title to those lands outside of those which you testified to in the mortgage?

A. I didn't; only a part of them.

Q. How many of them did you have title to, and how much money was due upon them?

A. There was not any money due upon them except what I owed to Preston, and I can't state the amount, for I was taking the lands all the time, and selling lands and paying Preston, and the account was a running account with him, and I could not state how much I owed on the particular lands.

Q. Did you owe $5,000 on those lands at that time?

A. No; on those lands I would owe Preston $3,000.

3091 Q. Were any of those lands what is styled the Preston lands in this controversy?

A. Yes; I can't say what portion, but I think there is about one-third or a fourth.

Q. How much did you owe altogether when you bought these lands of Cunningham, Hunt, and Eschleman?

A. I owed no one at that time, without, perhaps, it was some few debts here and there.

Q. How, then, do you say these lands already referred to, and marked "Exhibit C," were held as security for about $8,000?

A. Because it was taken after this. My operations with Preston were after my purchase from Cunningham, Hunt, and Eschleman.

Q. Did you not say that at the time you bought of Cunningham, Hunt & Eschleman, and gave that mortgage, that you owned some 6,500 acres of iand in Alpena and Alcona counties, unincumbered, besides those mentioned in the mortgage?

A. I didn't understand it so. I might have said so, but if I did it was wrong, because my operations with the Haineses and with Preston, most of it was afterwards.

Q. How do you get at these estimates that you have made as to the amount of saw-logs cut in '66–'67?

A. From the figures made on the company's books. I saw them on the company's books, and I saw them on the scaler's books. I got them from the books in the spring after they had got through with their jobs.

3092 I don't remember that I got them from anybody else afterward. I have not asked anybody to furnish them to me from the books. I think nobody has furnished those figures to me since that date; I don't recollect of any one. In '67 that water mill was worth somewhere about $5,000. I get at that partly from what it cost and partly from what it would yield—the profits. The lumber cost about $2,000 in putting in the new flumes and running-gear. The machinery I don't know how much it cost, and the frame and mill site, I am willing to state, would cost $5,000 or more. That mill could be run to advantage after the steam mill started. Perhaps it could not be run continuously, but it could be so near as to be profitable, and lumber can be made cheaper in the water than in the steam mill. If one mill only was run, the better management would be to run the steam, because it would cut the most lumber, not because it could be made the cheapest. The steam mill cuts about 40,000 a day, both circular saws running.

Q. When Robinson asked you whether you had used this check of $3,300 or thereabouts what did you tell him?

A. I told him I had. I didn't offer to refund it to him.

Q. Were not the terms of the Robinson mortgage for the payment of the $20,000 conditioned upon the profits to be made, and was not that amount to be paid from the profits of the business?

3093 A. I think the $20,000 was to be paid from the proceeds of the quarter interest, but the interest was to be paid irrespective of the proceeds of the quarter interest. I think the articles of copartnership by their terms provided when the copartnership was to begin. The card, "Exhibit E," was got up by me in Lockport, N. Y.

Q. Do you mean to say that the $500 that H. M. Robinson obtained on the Miller contract and appropriated to his own use was never accounted for to the firm?

A. I am positive up to the 9th of June.

Q. You limit it then?

A. Well, he never did. I will let it stand. He has never made any account to me. I can't tell the exact time the water mill was shut down. I came back on the 19th or 20th of May, and they had it shut down, and the man who was putting in machinery was about some other business. It was not understood between me and Geo. Robinson that it was to be shut down. Shutting it down was a violation of the articles of copartnership.

Q. Was this chattel mortgage that was given to Haines & Co. in the name of Oliver & Robinson, by Geo. J. Robinson, subsequently approved by you?

A. I think not. I don't know whether I made any formal objection to it than to Gallup. I objected to his charging me with the amount. I could not say when I objected to Gallup. I could not tell when I first learned that it was made or that I was charged with it.

Q. In what respect did the Robinsons say that you had misrepresented the property to them?

3094 A. I don't know. They never complained to me much. The misrepresentation they claimed was that I had not shown them all the claims there were on the property; that I had said the property was worth a great deal more than it was; that there was not so much property there as I had represented, and that they had been hoaxed into a trade that was a cheat. I don't know but they claimed I did not truthfully represent the amount of indebtedness at the time.

Q. You say at the time of your alleged exclusion from the firm of Oliver & Robinson they owed you $28,925.07; was that the amount of their indebtedness?

A. It was, excepting what the firm owed me individually.

Q. And your own debts at that time amounted to $88,411?

A. Yes; and the personal assets to $272,000. I got at the assets by going over the property at that time and making an estimate of what there was, and also by looking at the books and figures, and also by a statement taken from the books. I make up my assets according to the items found appended to my proposition marked "Exhibit F."

Q. You say that you understood that Cunningham and Hunt declined to turn over this proposition set forth in Exhibit F to C. Haines & Company.

Q. Do you know of your own knowledge that they ever turned it over?

A. I don't, only from what Haines said. I gave that written proposition to Haines to take down. I think I made it partly on the 8th and partly on the 9th of June, 1868, at Ossineke, at my
3095 house. It is in my own handwriting. I gave it to Hawkins. This exhibit, which is appended to my deposition, is the one, I believe.

Q. How did you get it back?

A. Hawkins brought it back. I can't say what time he gave it to me. It has been in my possession or my attorney's ever since. Hawkins brought it back about the middle of June, I think, 1861. I can't say whether I produced it to Cunningham in our interview about the 5th of September or not. I don't think I produced it in Cunningham's office at the interview preceding the making of the Buffalo agreement. I did not produce it at Williams' office when the agreement was canvassed. I never produced it personally to Cunningham, Hunt, and Eschelman. I was at Ossineke when Cunningham arrived there in September, 1868. I did not go up with him. Those papers were not prepared when he arrived. I prepared them.

Q. Who filled out the dates of the deeds, and the acknowledgement and certificate?

A. I am not positive, but I think I made out all the papers. I think it was on Friday that he came; I can't say positive. I don't know how he came, but I presume by the steamer Huron, and came down to Ossineke in a small boat. I can't say whether I saw him arrive or not. Geo. Hawkins came with him. I think I first saw him after his arrival on Friday. I think he came on Friday about noon; that, I think, was somewhere about the first of September.

Q. Did you talk with him that day about the business?

3096 A. Not about the transfer.

Q. Did you talk with him the next day, Saturday?

A. I don't know. The next day the first thing we did was to take the compass and go to the quarter post (that was on Saturday, the next day after his arrival.) We went to the quarter post between sections 11 and 12. The object was to ascertain whether the steam mill stood on lands that were mortgaged to Cunningham, Hunt, and Eschleman. I think Hawkins went with me. I think we got through before noon. I am not certain how long it took. I could not say whether we talked over the matter of the transfers that afternoon or not. Cunningham, after he found this mill was on other lands than those that were mortgaged to him, proposed to take the property. What was mortgaged to him was the south fractional half of section 12, and there was a small fraction left north of that which took the steam mill and the mouth of the river, and he found if others controlled the mouth of the river it would damage their security.

Q. Did you talk over the matter of the trust on his property then?

A. I could not say whether we did or not, neither could I say what he did on Sunday. I don't know whether I talked with him on Sunday or not. I don't know whether he went into the woods huckleberrying on Sunday or not. I think he was there two Sundays; that is my opinion. I think he was talking with George Robinson the most of Monday. I think I talked with him some on Monday. I think there some talk about the property.

3097 Q. Do you know what his conversation with George Robinson was?

A. I don't; only what Cunningham said. I think I settled with him on this trust on Tuesday; it may have been Monday, but I think it was Tuesday. Tuesday or Wednesday, I think, I commenced drawing out the papers; I am not sure. Some three or four days before he went away I commenced drawing the papers. I think he went away on Tuesday. I think I was the most of two days drawing the papers. I drew them in what they call the front room of the boarding-house. Nobody helped me draw them. I think it was about a half day after I got the papers ready before they got the witnesses together to sign and execute them. I think they were finished and executed about the middle of the afternoon.

Q. Did you and he leave right away after that for Alpena?

A. We did not. I think we left for Alpena a couple of days after. I think they went huckleberrying a couple of days before we went. The day the papers were signed, after they were signed, we went down on the dock and made a delivery of the property. I think it was the 7th they went to Alpena; it might have been the 8th. My remembrance is that the papers were not recorded the same day they were signed and executed.

Q. Were they the next day?

A. I think we went in a boat and owing to a light wind or something we got over late, and whether the papers were taken there that night or the next day I don't now recollect. I think there were three or four days after they were executed before they were recorded, although there are many opinions to the contrary.

3098 After getting to Alpena, I think, we got there at night and left the next day. I can't say whether the boat left in the morning or the evening.

Q. Do you know what day of the month that was?

A. I think it was on Wednesday, the 9th, but I am not certain further than from the events. I think Cunningham had been there four or five days before the papers were signed. The first place Cunningham and I went to after going to Alpena, I think, was the register's office. Those papers were then entered for record.

Q. Then did you go with him down the lake?

A. I did; we first stopped at Bay City.

Q. Did you make an affidavit in this case, dated the 2d day of March, 1871, before Addison Mandell, a copy of which was served on us?

A. I think I did. The facts set forth in that affidavit, I believe, were true.

Q. How did you get a copy of the entries on the books that you testify to in that affidavit made by Geo. Robinson?

A. I got them, in the first instance, from the books.

Q. Get a copy of them?

A. I did not; I only learned what was there.

Q. How did you get a copy?

A. I got a copy from George J. and Henry M. Robinson's answer to the bill that I filed against them in the circuit court for the county of Alpena.

Q. Is that the first intimation you had of it?

A. No, sir; I had in memory the subject-matter of these entries before. I got the dates of those memoranda from the books
3099 and from Robinson's letter to me, the notice, and from the date placed upon their answer.

Q. Where did you receive that letter testified by you as having been written by Geo. J. Robinson?

A. In the dining-room of the boarding-house at Ossineke on the evening of its date, about 5 o'clock. The papers between me and Cunningham had been executed before that time.

Q. Had they been recorded?

A. The bill of sale might have been put on file, but in all probability the others were not.

Q. Was the bill of sale put on file at Ossineke before the deed was executed and delivered to Cunningham?

A. I am not sure, but I think not.

Q. You say you saw those entries on the book?

A. I did; I saw the one that is dated the 5th on the evening of the 5th; as soon as I received the note I went directly over and looked at the entry.

Q. Did you show George J. Robinson those papers before they were executed by Cunningham?

A. I didn't; I had nothing to say to him, or at least he had nothing to say to me.

Q. How long prior to the execution of those papers had you spoken to him?

A. About two and a half or three months. I might have spoken to him, but not to have any talk about business. I didn't show him those papers after they were executed. I had no talk with him about the papers at all, nor about the conveyance; Cunningham did that, or affected to do it.

3100 Q. Did you ever communicate to him in any way that you had sold out your interest to Cunningham?

A. I did not in person. I told George Melville, his agent; I had a brief conversation with him in regard to the trust. I think I told George Melville after the papers were executed; I think I had a talk with him at the time I made a delivery of the lumber on the dock.

Q. After you received this letter from George Robinson, did you answer it or talk with him about its contents?

A. I did not.

Q. Did you, before you got to McMath's office in Bay City, ask

Cunningham for any of the papers in regard to that trust to be executed by him and handed back to you?

A. I did, on the steamboat going down, and it was understood before, also. I can't just state what the conversation was. I didn't make any formal request, and state over that that request should be for a paper; but that was the understanding. I told him we ought to have some statement in writing what the terms of the trust were. "Well," said he, "we can get that up at any time;" and so it rested. When I got to Bay City I went to see a man of the name of Cameron with reference to selling my interest in that property. The proposition to him was made before the sale to Cunningham, and it was understood by Cunningham that I was to sell to those parties if they came to time, and that was Cunningham's excuse for not signing the papers at the time.

Q. You say it was understood by Cunningham before the conveyance to Cunningham?

3101 A. Yes, sir. That there was an offer for the property, and that I might sell it; and if I did, that was to end the trust, and if not, he was to go on, and I was to know at once; that was was one part of my business down, also.

Q. Did you see Cameron?

A. I did. I think I did not offer him the property on this occasion; it had been offered to him before. I think I waited on his acceptance of the proposition that had been made.

Q. Did you ask Cunningham to try and have Campbell buy it?

A. I never asked Cunningham's assistance to sell the property to anybody.

Q. Did you, after you got down, offer the property to a man named Wheeler?

A. I had offered the property to Wheeler before. I think Wheeler and Wesson were offered the property together by me after the conveyance to Cunningham, and after Cunningham had telegraphed to me to come back, and after the Buffalo agreement.

Q. Did you not offer the property to several other parties after you went down with Cunningham, and before the Buffalo agreement?

A. No, sir.

Q. You did not offer it to any one or more persons before the Buffalo agreement and after the conveyance to Cunningham?

A. I don't think of any one, excepting Cameron. We all had a proposition when the papers were made, and the next, I think, was Wheeler and Wesson.

3102 Q. Was not that conveyance made to Cunningham with a view to enable him to act with you to secure a sale of the property?

A. It was not; I didn't require assistance to sell the property at all; I could do that myself; I never asked him to sell or help sell, except using his influence with those parties that I found and brought to him to purchase the property; that is, I never asked him to go out of his way to find a purchaser, nor did he ever, to my knowledge, find a purchaser.

Q. Were you not busy from the time you went down with him until the thirty days expired under the Buffalo agreement seeking after a purchaser for that property?

A. From the 9th of September until the last days of September, the most of the time I was engaged. I went down with him; was only a few days at Flint, and went back to Ossineke. After that he telegraphed for me to come to Buffalo, and I met him there about the last days of September, '68. We then had a meeting at Cunningham's office, and he and I started for a little town beyond Oleans, where Mr. Wheeler lives; went to see him, and, I think, I went from there to Painted Post, and saw Wesson.

Q. How many persons did you offer that property to, or seek to have purchase it, from the time of your conveyance to Cunningham up to the expiration of the time under the Buffalo agreement?

A. I suppose that Robinson, Haines, and Ranney would come under that proposition on the Buffalo arrangement; I don't know, but outside of that, I don't recollect any other persons except
3103 Wheeler and Wesson. Cameron had the offer between the conveyance to Cunningham and the Buffalo agreement, and Wheeler and Wesson after the Buffalo agreement.

Q. What was to be done under your arrangement with the Preston lands?

A. Cunningham was to take the Preston lands and take a deed to himself, and when all the debts were paid and the amount that he paid Preston with interest, then he should deed one-quarter in towns. 28 and 29 north, range 8 east, to Geo. J. Robinson, according to my agreement with him, and the balance he was to deed back to me after the property was paid for—three-fourths of what were in towns. 28 and 29 north, of range 8 east, and all the lands outside of those towns.

Q. You stated that you quit claimed certain lands to Robinson, Haines & Co.; in what counties were those?

A. Alpena and Alcona; they were made to Robinson, Haines, and Ranney.

Q. Did you have any title to those lands at that time?

A. I think not; I am not sure what lands were put into that deed, but that was the intention of deeding; they supposed I had withdrawn from market some of these lands prior to this. I think at that time I had no title to those lands.

Q. Did you not know at the time you made that deed you had no title to those lands?

A. I supposed I had not; I offered it to them from the fact that they requested me to; I had those lands withdrawn from the market and they supposed I owned them and had not conveyed
3104 them to Cunningham, and that I would trouble them in running logs, and they wished I would convey them.

Q. Did you represent that you did convey the title to them?

A. I represented that I hadn't the titles—they had passed from me; I failed to keep scrip in the office and other parties had taken the lands.

Q. To whom did the title of these lands pass?

A. I think to Heather & Allison, and there might some of them have been taken by other parties.

(Signed) DAVID D. OLIVER.

G. B. MELVILLE recalled.

Examined by Mr. RUSSELL:

Q. Will you please look at "Exhibit F" attached to the deposition of Mr. Oliver, which is the proposition of Oliver to Hunt and Eschleman of the 9th of June, 1868, and state when you first saw that paper and where?

A. At Devil river some time in 1868, in June; I don't know whether it bears this date or not; it was some time in the fore part of June; I think both H. M. Robinson and George J. were there and were with me when I saw the paper.

3105 Q. Who showed it to you?

A. Hawkins had it from Oliver; he was working with the Robinsons at that time; I think Hawkins also showed it to H. M. Robinson and George about that time. The proposition was generally talked over between George and the old man and myself.

Q. What was said by them in your presence, or by you, in regard to who should take it down to Buffalo, and what instructions were given to Hawkins when he went down with the proposition in regard to this proposition, or any other proposition to foreclose the mortgages or anything else?

A. Hawkins is a particular friend of Hunt's, as I understood it, and also of Cunningham's

Anything Hawkins said is objected to.

WITNESS: Hawkins was the man appointed to go there with the proposition.

Q. By whom was he appointed and who had knowledge of his appointment?

A. Oliver supposed Hawkins was working friendly to him and Hawkins was working with the Robinsons and myself.

Q. What instructions were given to Hawkins when he went to Buffalo with this proposition?

A. That if he didn't sell Cunningham was coming on to buy out. When Hawkins went to Buffalo with this proposition I think Oliver gave him instructions in regard to it. The Robinsons saw the instructions and gave Hawkins money to go.

Q. State in regard to the water mill what the practice
3106 was in regard to cutting logs and the size of the logs that were cut?

A. We sawed a great many large logs in that mill. I have sawed logs that would measure (1,200) one thousand two hundred feet. We had to halve them and quarter them, and cut a gutter right through the log to let a stump go through, and also one underneath. To do that took us some little time, but those large logs we could not cut very well with the steam mill unless you do it by canting; you can saw almost any sized log by canting.

Cross-examination:

Q. When and in what particular place was this proposition exhibited to you and to the Robinsons by Hawkins?

A. I can't tell you. I think it was in the office—it might have been in the old man's house. It was some time in the fore part of June. I can't tell the day of the week. By the old man's house I mean H. M. Robinson's. It may have been in my own house. Hawkins and myself and I think H. M. and George were present at the time. The clerk may have been present; I don't know.

Q. Who exhibited it?

A. Hawkins brought it from Oliver's house. I think Oliver was not present himself; I can't state positive.

Mr. DUFFIELD: If Oliver was present I object to the testimony.

Q. You don't know, then, of any conversation in reference to that proposition in your presence between Hawkins and the Robinsons when Oliver was present?

A. No, I don't.

3107 Q. What, then, do you mean by saying that if Hunt & Eschleman did not accept that proposition that Cunningham was to buy out or buy in?

A. As I understood it from the whole of them—that is, Robinson and Oliver—that if Hunt & Eschleman did not help Oliver that Cunningham was to go and take hold of it. I heard that from the Robinsons and Hawkins, and Oliver, I believe, was there, too.

Q. Is that all you know about any arrangement for Cunningham to buy in as proposed in this conversation?

A. At that time.

Q. What was the average size of logs cut in that water mill—not what you put through?

A. We sawed the largest logs. I should think about 30, 34, and 36 inches; but I have sawed larger.

Q. How many logs larger than 34 and 36 inches have you ever sawed in that mill any time while it was running?

A. In 1855 we sawed a great deal of lumber through that mill in large logs, and we had to halve them and quarter them to get them through. I have sawed forty-eight inches, hewed the bark off and cut a gutter right through the log, so as to get the stump through on both sides; have to stub shot underneath and on top, so as to get it through.

G. B. MELVILLE.

3108 *Deposition of Philip Kershner,*

A witness produced, sworn, and examined in the above-entitled cause on the part of the complainant, before Addison Mandell, a master in chancery of said court, on the fourteenth day of August, A. D. one thousand eight hundred and seventy-one, at his office, in the city of Detroit, at which time and place the said complainant was present by Alfred Russell, his solicitor, and said defendants by D. B. Duffield, Esq., one of their solicitors. Said witness testified as follows, to wit:

PHILIP KERSHNER, a witness produced and duly sworn on behalf of complainant, says he resides in the city of Detroit and is a lumber merchant; has been employed in that business since the winter of 1865; has known George J. Robinson since the summer of 1868—early in the summer. I purchased some lumber of him in the city of Detroit; the contract was made here; the lumber was to come from Ossineke or Devil river.

The defendants object to any evidence in relation to a contract, the same being in writing and not produced.

3109 I think I have the contract at my house; nothing was said about the quality that day; the lumber I purchased was all common lumber; it was to be sawed at Mr. Robinson's mill at Ossineke; I made only one purchase of him; I believe I purchased of him about two hundred thousand feet, or in that neighborhood; I believe I paid him $12 per thousand feet; I think that was the price. Early in the spring of 1869 I had a conversation with Mr. Robinson in reference to the purchase of some logs got out in the winter of 1868 or 1869.

Objected to as irrelevant.

Robinson spoke of the logs he had got out as being very fine, as being the largest class of logs he had ever seen, running about or less than two logs to the thousand feet; that each log would give about five hundred feet; that, in his opinion, each log would produce at least forty-five per cent. of upper qualities; in my opinion that is an unusual quantity of uppers; it is an unusual thing for logs to run five hundred feet; I allude to short logs, of course; in my opinion that quality of pine, being cork pine and yielding forty per cent. of uppers, would be worth $15 per thousand feet in the boom at Ossineke, or anywhere in Saginaw Bay. It seems to me he said they were getting out about 6,000,000 feet; I am not positive about the quantity.

(Signed) PHILIP KERSHNER.

On cross-examination:

I did not purchase from said Robinson any lumber, except common lumber and at the one time.

(Signed) PHILIP KERSHNER.

3110 Direct resumed:

I think Robinson's statement as to the quality of logs applied to the whole 6,000,000 feet above testified to.

(Signed) PHILIP KERSHNER.

Subscribed and sworn to before me, this 14th day of August, A. D. 1871.

(Signed) ADDISON MANDELL,
Master in Chancery of said Court.

Depositions of Ery H. Toland, Robert D. Huff, and James B. Wayne,

Witnesses produced, sworn, and examined in the above-entitled cause on part of the complainant, before Addison Mandell, a master in chancery of said court, on the fourteenth day of July, A. D. one thousand eight hundred and seventy-one, at his office, in the city of Detroit, at which time and place the said complainant was present by Alfred Russell, his solicitor, and said defendants by D. B. Duffield, one of their solicitors. Said witnesses testified, respectively, as follows, to wit:

ERY H. TOLAND, a witness produced on the part of the com-
3111 plainant, and being duly sworn, says: That he resides at Bay City, and has resided there about two months.

Q. How long were you employed upon the premises at present occupied by Cunningham, Robinson, Haines & Co., in Alpena county?

A. About three years, lacking two days. I came there in June, 1867, and left there in August, 1870. I was clerk in the store and tallying lumber, both together. The water mill was running when I came there. I should say the water mill about that time was worth about $7,000. The mill averaged about 15,000 feet of lumber per day. After the steam mill was started up the water mill was stopped. It was stopped in the month of September, after I went there. I worked for David D. Oliver when I went there. George J. Robinson and Henry M. Robinson came there to look at the property in the fall or latter part of the summer of 1867. They examined the mill over, the property around there, and went up into the woods. They examined the goods in the store and the books. The Robinsons left Devil river and went below. George Robinson returned the last of November or the first of November of that year. Before he returned he wrote a letter to Mr. R. E. Gallup, who was book-keeper at that time, to take an inventory of the stock about the place—of the store, in the mill, and around the place. This was before the new goods came—before the goods came for the firm of Oliver & Robinson. The old goods in the store inventoried over $9,000. Mr. Oliver was not at Devil river when the inventory was taken. He
3112 was in Detroit, and came up with George J. Robinson in the last boat. Witness worked for Oliver & Robinson after the partnership was formed.

Q. How many logs were got out by Oliver & Robinson in the winter of 1867 and '68?

Objected to on the ground that it is not shown by previous inquiry of the witness that he has any knowledge or means of knowledge as to the particular fact inquired about.

A. About eight million feet.

Q. When did Henry M. Robinson come there again?

Objected to as altogether irrelevant, as Henry M. Robinson is not a party to the suit.

A. He came there, I think, on the 27th day of December, 1867;

at any rate, it was on St. John's Day. Oliver and George J. Robinson, he did not see them. He inquired how they were getting along; said he could not stop, and returned to Detroit without seeing them.

Objection to all testimony in relation to H. M. Robinson conceded to have been made by defendant at the proper time.

WITNESS: Henry M. Robinson came again to Devil river the next spring or early in the summer and remained there some time; can't say how long. Witness remembers the fact of Oliver going away in the spring, but he cannot give the time. George J. Robinson and his father, Henry M. Robinson, run the mill after Oliver left: they had a foreman. The old man had as much to do with running the property as the young man had. Oliver, I should judge, was gone about a month. Knows Henry S. Cunningham. He came
3113 to Devil river in the fore part of September, 1868. George Hawkins was there at the same time. Oliver was there. Cunningham was around the place, but I don't know what he did when I left Devil river and quit working in the store on June 4th, 1870. I was working for the firm of Cunningham, Robinson, Haines & Co. I know a concern called the Ossineke Lumber Company.

Q. Do you know who comprise it, or who are connected with it?

Objected to on the ground that witness is not asked whether his knowledge is or is not based on or derived from any written paper of copartnership or association.

A. I cannot say who comprise it. George J. Robinson was there in charge of it, and the shipping bills of lumber shipped by Cunningham, Robinson, Haines & Co. had printed headings of "Ossineke Lumber Company." The tools and bags of Cunningham, Robinson, Haines & Co. were marked "Ossineke Lumber Company." They used the same books they had been using. Cannot say how they came to assume the name of Ossineke Lumber Company. Witness was ordered by George J. Robinson to mark the bags of the firm with that name. Marked the bags in the summer of 1869, I think. The firm of Cunningham, Robinson, Haines & Co. commenced using the printed headings of the Ossineke Lumber Company in the spring of 1869. They were printed in Alpena. Just before I commenced to work for Cunningham, Robinson, Haines & Co. I do not know who I was working for. I worked under George J. Robinson's orders. All the papers, receipts,
3114 shipping bills, and all papers connected with the transaction of business before witness commenced to work for Cunningham, Robinson, Haines & Co. were signed George J. Robinson *et al.* George W. Hawkins remained at Devil river quite a number of days after Cunningham left, and acted as a sort of foreman in in the business—can't say how long.

Q. State what you know about any change in the conduct or management of the business after Cunningham came there, as you have stated.

A. Hawkins was put in as foreman, and had charge of the river

driving. George B. Melville had charge of the mill. These were all the changes I remember of. Have no knowledge who put Hawkins in charge as foreman. In the summer of '68 Oliver ceased to have any practical charge of the business; cannot remember the exact day. That was when the words "*et al.*" were attached to Robinson's name in the business. Geo. J. Robinson came into the store one day and called witness's attention to two entries in the day-book. The first one was dated September 5th, 1868, and the date of the other was some four or five days after; about the 10th or 11th of September. The sum and substance of the entries were that Oliver's accounts had ceased upon the books. The entries were Geo. J. Robinson's handwriting. The occasion of Robinson's calling witness's attention to the entries was that witness had let Oliver have some goods from the store. There was a pretty good lot of lumber on the docks when Cunningham was there; the docks were pretty well filled.

(Signed) ERY H. TOLAND.

3115 Cross-examination:

Witness says that he was 21 years of age on the 27th day of August, 1870; I was about 18 years old when I went into Oliver's employment, in '67; am not related to Oliver.

After Mr. Robinson went to Devil river I continued to be a clerk in the store. The next spring I did some tallying. I was clerk in the store all the time I was there. I was not the regular book-keeper, but I kept the books in October and November, '68, after Gallup left, and before R. D. Huff, the new book-keeper came. My business now is that of clerk in grocery store. I never was connected with the lumber business at Devil river, except to do some tallying and inspecting. I partly loaded three vessels during the time I was there, occasionally doing some inspecting; that was done when I partly loaded the three vessels. I have tallied a good deal of lumber there; when small quantities of lumber were sold I went down and sold it. Never run a mill, but I did work one month in the lath mill. I run the machine and manufactured the lath. The only time I worked in the mill was when they concluded not to employ a clerk in the store beside the book-keeper, and while I was waiting for my pay to come from Buffalo, I worked in the lath mill. I have no knowledge of mill irons or mill machinery. They did not deal in them in the store; never bought or sold them. Mr. Gallup, the book-keeper, and I took the inventory mentioned in my direct examination. Henry M. Robinson did not have any fixed position assigned
3116 him in the business, but when Geo. J. Robinson or Oliver was gone, the men went to Henry M. Robinson. That is what I mean when I say he had as much to do in the business as Geo. J. Robinson.

The name of the Ossineke Lumber Company was not used in 1867. Mr. Robinson had the stencil plates made in Detroit, and they came to Devil river in the winter of 1868–'9, after Mr. Huff arrived. This is all I know of my own knowledge of the beginning of the Ossineke Lumber Company, or who composed it. Can't say

how many days Hawkins was at Devil river after Cunningham left. He went to Saginaw and hired some men. He had charge of the river work and farming. Cannot say how many days Hawkins was engaged in work on the river; but I can swear I saw him at work on three different days there. Can't say I saw him doing farm work. He came to the store six or seven times for nails for building fences. I did not see him build the fences. I am now in the employment of Campbell & Tyler, in their wholesale grocery at Bay City. I think I made an affidavit in this case. Cannot recollect now what it was about.

(Signed) ERY H. TOLAND.

Direct examination resumed:

There are two persons by the name of George W. Hawkins. One is a lumber-inspector in Alpena, and the other lives in the State of New York. In my examination I refer to the one living in the State of New York.

(Signed) ERY H. TOLAND.

Subscribed and sworn to before me, this 14th day of July, A. D. 1871.

(Signed) ADDISON MANDELL,
Master in Chancery of said Court.

3117 ROBERT D. HUFF, a witness produced and sworn on the the part of the complainant, says he resides in the city of Detroit, No. 80 Columbia street west; was book-keeper in the store at Ossineke, on Devil river. I arrived there on the 25th day of November, 1868. George J. Robinson hired me to go there. Could not tell the name of the firm when I went there. They had no firm name, apparently. I received my first pay from Henry M. Robinson; it was paid to my wife in Detroit some time during the winter following, the latter part of December or the first of January. I had access to all the books and papers pertaining to the merchandise. I saw the books of Oliver & Robinson. I saw the books of Oliver kept before the formation of the firm. I do not know who claimed the ownership of the property when I went there. I left there the 12th day of May, 1869. The Ossineke Mill Company claimed to own it then. It was on the return of George Robinson, two or three weeks after I arrived there, that I found out for whom I was working. It was Robinson, C. Haines & Company. The name of the firm was changed from the 1st to the 15th of January, 1869. I have not the exact date. It was changed to the name of Cunningham, Robinson, C. Haines & Co. The last name was again changed in February to the Ossineke Mill Company.

Q. What did George Robinson say to you respecting Oliver's books?

Objected to on the ground of irrelevancy.

A. I asked him if I could take them from the safe, and he said I might—we were very much cramped for room at that
3118 time. They were, part of them, placed in a box containing Oliver's private papers in the office, and the

other part were plied upon the safe; this was about the 15th of December, 1868. It might be a little before, or a little later. The concern got out logs the winter I was there. George B. Melville had charge of the camps. The account of logs was kept in a book by the scaler—that did not come into my custody. I do not know how many logs were cut and hauled, Robinson said the scaling of the logs would be brought in to the credit of the respective camps, to offset the bills of merchandise, and that I need not credit each of the camps with the weekly reports, as I did not get but half of them, and he got the other half.

(Signed) ROBERT D. HUFF.

On cross-examination:

Witness says, I never saw any articles of copartnership or association, or any paper purporting to be articles of copartnership of the Ossineke Mill Company, or any other copartnership connected with that business; I don't know who the members of that firm were; I was employed as an entry book-keeper, or assistant book-keeper, and at the same time to act as salesman and superintendent of stores and supplies. I was there about five months.

(Signed) ROBERT D. HUFF.

Subscribed and sworn to before me, this 14th day of July, A. D. 1871.

(Signed) ADDISON MANDELL,
Master in Chancery of said Court.

3119 JAMES B. WAYNE, a witness produced and sworn, on the part of the complainants, says: I live in Detroit; have been a machinist by occupation for thirty-five years; know all the parties, except Eschleman, to this suit; have had business dealings with all the parties, except him; was formerly a partner with Henry M. Robinson; the firm of Wayne & Robinson furnished Oliver with about $17,000 worth of machinery to go upon the Devil river mill property, in the winter of 1866 and 1867. Oliver paid us $5,000 in cash, and gave us a chattel mortgage for the balance upon the property. When the payment became due on the chattel mortgage we would not extend it without additional security, and he gave us a real estate mortgage in addition, on, as he said, about seventeen thousand acres of land, for $11,000. This was a first mortgage, as he said, on some of the land, but on most of it it was a third mortgage. I understood this mortgage covered some of the land already mortgaged to Hunt & Eschleman and Cunningham. In the latter part of 1868 I applied for my firm to Cunningham and to Haines and Ranney to ascertain the condition and title of the property, and its management also. I went to the State of New York for that purpose; my object in going was to get my pay, or rather that due my firm. Cunningham referred me to Haines, of Lockport, New York. I went and saw him, and saw Ranney at the same time; Haines said the lumber concern owed him a great deal of money; that he was getting nothing for it, and he did not feel disposed to advance any more money. Haines and

Cunningham both told me they had advanced largely to Oliver, and they would be glad to get it back again. I am
3120 not aware that they said anything about the title to the property at that time. Ranney and Haines referred me to Oliver, and told me to foreclose the mortgage. At that time Ranney & Haines said nothing about Henry M. Robinson. In January, 1869, I again applied to Cunningham, Haines, and Garret B. Hunt. The circumstances had changed somewhat during that time. I learned through Mr. Duffield's office that the parties owning the mill would be here in Detroit for the purpose of combining their interests, and wanted some new machinery, and that it might be a good time to get that old matter fixed up. I therefore let it run along until they came here. Cunningham came here. We had a talk about the old claim we had against Oliver, and a proposition was made for settlement and accepted. The settlement was made in connection with a new contract. I told Haines, and also Hunt, that I wanted to know with whom I was dealing this time; that the notes they were to give for the new machinery must have some other names on them than those of the firm name—Cunningham, Robinson, Haines & Company; that I wanted all the parties connected with the concern to be personally held. Hunt replied that he would be held just as much by the firm name as by a separate indorsement; but I insisted upon his separate indorsement, and obtained it. Haines did not raise any objection, and gave his indorsement. It was a part of the contract.

Mr. Duffield objects to any and all testimony already or hereafter to be given as to this adjustment without the production of the contract, the same being in writing.

3121 I asked Mr. Haines who composed the firm, and he replied: "Cunningham, Haines, George J. Robinson, and Philip Ranney." I put the names down on the contract at the time. He also said that there would be no trouble about the pay; they were going to be a strong firm and push matters. He said that the new arrangement was a consolidation of all mortgage interests. I cannot say that I asked Hunt who composed the firm. My conversation on this subject was chiefly with Haines. The two notes which Hunt endorsed were something over $1,700 each. Haines executed them, I think, but am not positive; but they were signed "Cunningham, Robinson, Haines & Co." These notes were given to the Fulton Iron Works for new machinery to go upon the property.

I was at this time indebted to Henry M. Robinson, by mortgage (Mr. Duffield here objects to any testimony by witness as to transactions between him and H. M. Robinson as irrelevant to the case), to the amount of about $6,500. I was paid that amount, and the above two notes of $1,700 each, in full payment of my contract. The amount of the balance due in my contract with Cunningham, Robinson, Haines & Co. was over $10,000. They made a turn, Robinson cancelled my mortgage, and Cunningham, Robinson, Haines & Co. paid the two notes to me.

Witness thinks Robinson had assigned that mortgage to Haines, and Haines cancelled it.

In making this settlement I did not discharge the mortgage made by Oliver to Wayne & Robinson, but assigned it to H. M. Robinson, together with the obligation secured thereby. This was done
3122 upon the request of H. M. Robinson. The whole amount of new machinery was $7,000 furnished to Cunningham, Robinson, Haines & Co.

(Signed) JAMES B. WAYNE.

Subscribed and sworn to before me this 14th day of July, A. D. 1871.

(Signed) ADDISON MANDELL,
Master in Chancery of said Court.

Deposition of Henry S. Cunningham,

A witness produced, sworn, and examined in the above-entitled cause, before Addison Mandell, a master in chancery of said court, on the eleventh and twelfth days of May, A. D. one thousand eight hundred and seventy-one, at his office in the city of Detroit, at which time and place the said complainant was present, together with Alfred Russell, Esq., his solicitor, and said defendants, by D. B. Duffield, Esq., one of their solicitors. Said witness testified as follows, to wit:

HENRY S. CUNNINGHAM, a witness, duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as fol-
3123 lows: That he is the Henry S. Cunningham named as defendant in this cause; has resided in the city of Buffalo, in the State of New York, several years past; have known complainant about 5 or 6 years past; defendant, together with defendants Hunt and Eschleman, sold to complainant certain lands, and took back from him a bond and mortgage for the sum of thirty-five thousand dollars.

Q. Have you ever received from any person any portion of the $35,000?

A. I have received money on that mortgage.

Q. How much money?

A. My recollection is I received in the first place from a party about twenty-five hundred dollars; about that; between twenty-four and twenty-five. Since then I have received money from other parties with whom I have an unsettled account. The money I first received I applied upon the mortgage; have made no further application upon the mortgage than the amount first received.

Q. From whom did you receive the sum first named, about $2,500?

A. I received it, I think, from C. Haines, of Lockport, N. Y.; but I cannot remember definitely about that; I mean my codefendant, Calvin Haines. I understood him to be paying it for Mr. Oliver for interest.

Q. Have you, as an individual, ever received from any person

whatsoever any money or valuable thing of any kind for your individual interest as mortgagee in the mortgage named?

A. I have received money from the parties to whom I transferred my interest, since the transfer was made, that has never been refunded to them.

3124 Q. How much money, and from what parties, and when, and in what funds, was it paid?

A. I have received from Garret B. Hunt sums of money at different times in currency to the amount of from one to two thousand dollars. I have also received from Hunt and Eschleman money, either in currency or drafts, to the amount of from one to two thousand dollars.

Q. Give the date and amount of any particular sum paid you at any time by Hunt or by Hunt and Eschleman together, as and for the consideration of any transfer by you to them, or either of them, of your individual interest in that mortgage.

A. I have never received any sum that was specifically named as for the consideration of the transfer of my interest in the mortgage.

Q. Then why did you answer my previous question, inquiring whether you had ever received anything from anybody for your interest as comortgagee, by saying you had received one or two thousand dollars from Hunt and one or two thousand dollars from Hunt and Eschleman?

Question objected to for the reason that it assumes to charge the witness with saying what he did not say.

A. I considered it a proper answer to the question, as I stated that I had received a valuable consideration from parties to whom I had transferred a valuable consideration. I meant to be understood that I considered a proper answer to state that I had received a valuable thing from parties to whom I had transferred a valuable thing.

3125 Q. Was it a proper answer if the thing received was not in pay for the thing transferred?

A. That would only be an opinion, and I must leave it for you to judge.

Q. The money you received you say has not been refunded; are bound to refund it? Or explain what you mean by that term.

A. I consider myself bound to refund it or account to them for it.

Q. Have you ever in reality parted with your actual interest in the mortgage named?

A. I have.

Q. Have you ever received one dollar from the transferees as and for payment to you for that interest?

A. Only as before stated.

Q. Give the date or amount of any sum in currency or any sort of paper of any sums received by you as above stated, and not refunded, since you parted in reality with your actual interest in said mortgage.

A. I have no data with me to refer to, and from personal recollection cannot give any very definite statements.

Q. When you have in reality parted with your actual interest in the mortgage, do you mean anything more than that you subscribed your name to a formal transfer of your interest to Hunt and Eschleman, and do you consider that the execution of such an instrument enables you to safely swear that you have in reality parted with your actual interest in said mortgage?

A. Yes; I do.

Q. What more do you mean?

3126 A. I mean to say I considered, and do consider, that I made a full transfer of my interest in that mortgage to Hunt & Eschleman.

Q. What have you ever got for it?

A. I have received from them only as above stated.

Q. What interest had you, or what motive had you, in traveling from Buffalo to Alpena and becoming Oliver's trustee, if you ever became his trustee?

A. I went at Oliver's urgent and repeated solicitations to Alpena.

Q. I repeat what interest or motive had you?

A. No interest or motive but to serve Oliver and his interests.

Q. Had you not at the time large business interests and property interests in the State of New York and elsewhere demanding your constant and daily care and attention?

A. Not at that time so much as previous to that time.

Q. Were you at that time engaged in business with your codefendant Hunt or your codefendant Eschleman?

A. In no regular stated business. I was interested previously with them in buying and selling Western lands, and about that time and some since, but mostly before.

Q. Had you any business interests with them at the time you took the transfer of Oliver's property?

A. I think not.

Q. Were you at that time a partner with anybody in any business?

A. No; I think not.

3127 Q. Were you conducting any business of any kind individually?

A. My principal business at that time was managing the Indian agency for the United States Government in the State of New York.

Q. Were you at that time owner or joint owner with Hunt and Eschleman of pine lands in Michigan, on the Lake Huron shore, or that region?

A. Yes, sir; I was.

Q. Were you at that time connected by blood or marriage with either Hunt or Eschleman?

A. Hunt was at that time my father-in-law. I was not related to Eschleman.

Q. Did any relationship then exist between Hunt and Eschleman?

A. I am not aware of any.

Q. Did any relationship then exist between you and your codefendants, Haines and Ranney, or between them, or either of them, and Hunt and Eschleman, or either of them?

A. No, sir; not that I know of.

Q. Did any business connection of any kind exist between any of the last-named parties, or either of them, at that time?

A. Not to my knowledge, except that Haines & Ranney were their partners.

Q. In what business were they then partners?

A. In the lumber business at Lockport, New York.

3128 Q. Before going to Alpena to take the transfer of Oliver's property did you have any conversation with Hunt or Eschleman upon the subject or object of your journey?

A. I think I did.

Q. Did you have any with Haines or Ranney upon the subject or object of your going before you started?

A. I did not.

Q. What passed between you and Hunt & Eschleman at the conversation you refer to in your answer to the last question but one?

A. The conversation before I went up to Alpena was a continuation of what had been previously said between them and Oliver and myself.

Q. Who went with you to Ossineke at that time?

A. George W. Hawkins.

Q. Were you acquainted at that time with George J. Robinson?

A. I had seen him twice before that time.

Q. Were you acquainted with Henry M. Robinson, the father of George J. Robinson?

A. I remember of seeing him once before that time.

Q. Had you ever looked over the Oliver property before that time?

A. Not as the Oliver property. I looked over a tract of land that was afterwards sold to Oliver, in that vicinity.

Q. Did you, at that time, have knowledge of E. & G. R. Haines, the C. Haines & Co., the J. B. Wayne, and J. H. Hill mortgages upon the Oliver property?

A. I did know by report that they had claims—I mean mortgage claims—upon the property at that time.

3129 Q. At that time had you received upon the $35,000 mortgage any of the principal sum?

A. I had not.

Q. Was it overdue?

A. I think there was a payment or payments due, but not the whole amount.

Q. Had you received all the interest there was due?

A. I cannot say.

Q. On what day was your quit-claim deed actually executed to Robinson, Haines & Ranney, the written date of which is October 3d, 1868, and the acknowledgment of which is the 13th day of November, 1868.

Objected to, without having the deed or a certified copy thereof produced to witness.

A. I do not remember about those dates. It would be guess work if I should state anything about them.

Q. Did Hunt and Eschleman take from Haines and Ranney assignment of their mortgages against Oliver and against George W. Hawkins at any time, to your knowledge?

A. I never was present when such a transaction was had, and my recollection is, I have no personal knowledge of it ever being done.

Q. When you received the transfer of Oliver's property, or at any time thereafter, did you pay him anything, or did you pay any of the liens or encumbrances upon any part of said property, or did you pay any of his indebtedness of any kind?

A. At the time Oliver made the transfer I paid him nothing. Since that time I have loaned him small sums of money, and
3130 soon after that time. I did not pay any of such liens or encumbrances, or pay any of his indebtedness of any kind.

Q. Have Robinson, Haines, and Ranney, to whom you transferred Oliver's property, or has the firm of Cunningham, Robinson, Haines & Ranney ever paid Oliver anything for the property, or any of the liens or encumbrances on said property, or taxes, or State and county charges upon it, or any of Oliver's indebtedness?

A. I do not know that those firms have paid Oliver anything for said property, or any of the liens or encumbrances upon it, or taxes or county charges, or any of Oliver's indebtedness—I mean individual indebtedness. I cannot now recollect that they paid any of Oliver's copartnership indebtedness.

Q. Have Robinson, Haines, and Ranney, to whom you transferred Oliver's property, or the firm of Cunningham, Robinson, Haines & Ranney, ever, in any way, indemnified Oliver against any of the said liens, encumbrances, mortgages, or indebtedness?

A. I do not know that they have.

Q. Did Robinson, Haines & Ranney, or Cunningham, Robinson, Haines & Ranney, enter into possession of the property covered by your deed of transfer made to the former parties?

A. I suppose that Robinson, Haines, & Ranney did, and afterwards the firm of Cunningham, Robinson, Haines & Ranney did.

Q. Are you able to state what benefit or consideration of any name or nature has accrued to Oliver from yourself or from Robinson, Haines & Ranney, or from Cunningham, Robinson,
3131 Haines & Ranney, or from any parties interested with or connected with these parties, in exchange for the alleged ownership and possession and use of the property transferred by you to Robinson, Haines & Ranney?

A. I do not know that I am able to state what benefit or consideration, if any, accrued to Oliver from said firm or parties.

Q. When you went to Ossineke, did you examine the boundaries of the property covered by the Cunningham, Hunt, and Eschelman mortgage for the purpose of ascertaining and satisfying yourself whether the mill property was included in the mortgage?

A. I think I did.

Q. Why did you do this?

A. I had understood that some one had raised the question whether it was included in the mortgage or not. I went with Oliver and Hawkins to look at what they said was the line.

Q. Shortly after the transfer by Oliver to you, did you and Oliver go to the office of McMath & Robbins, of Bay City, with reference to procuring the preparation of an instrument in writing to be executed by you to him, setting forth the objects and purposes of Oliver's transfer to you?

A. Shortly after the transfer we went to Bay City in the boat, and the second or third day after the transfer Oliver asked me to go to the office of McMath & Robbins. I went with him at his request. I don't think I understood what the object of going was until I got to the office.

3132 Q. Was any writing prepared for you to sign at that time?

A. I don't think I saw any paper or heard of any such paper.

Q. Did you then and there, in the presence of Robbins, McMath, and Oliver, positively refuse to make or sign any writing descriptive of the objects and purposes for which Oliver had put his property in your hands?

A. I think I did.

Q. Did you make a sale of the property transferred to you by Oliver, and, if you did, what did you get for the property?

Question objected to for the reason that the sale was made in pursuance with a written agreement, which is not produced.

A. Oliver and I negotiated with parties for the sale of the property, and I got nothing, nor expected to get anything.

Q. What did Oliver get?

Question objected to, that the agreement above mentioned regulated what he was to receive, and should be produced.

A. I do not know how much he got.

Q. Do you know that he got anything?

A. I cannot say now that I do know.

Q. Can you name a single condition of the sale made by you which was performed by Robinson, Haines and Ranney, the parties to whom you sold?

Question objected to for the reason that the agreement above mentioned should be produced.

3133 A. My recollection is that, in this particular, the agreement was carried out, and beyond the stipulation, viz: That Oliver had a certain length of time to make a sale to any other party that would be more advantageous to him, and no transfer of the property was made for some days after the time expired; it was left open.

Q. At the time of your conveyance to them, did they pay one-half of the E. & G. R. Haines mortgage upon a part of the property conveyed?

A. No, sir; they did not to me, or any one else, to my knowledge.

Q. Did they, at the time of your conveyance, procure the discharge of the Hawkins mortgage, made to C. & G. R. Haines upon lands in Erie and Niagara counties, in the State of New York?

A. They did not, to my knowledge.

Q. Did they, at that time, procure an assignment of said last-named mortgage to Hunt?

A. I don't know whether they did at that time or not.

Q. Did they pay to Hunt $4,000?

A. I do not know that they did.

Q. Did they pay David Preston the sums due to him?

A. I do not know that they did.

Q. Did they convey to Oliver's nominees sixty-five hundred acres of land?

A. I don't know that they did.

Q. Did they pay any of the incumbrances, subject to which you conveyed the property?

A. I do not know that they did.

Q. Did they allow the property to be sold over and over again for taxes?

3134 A. From my own knowledge, I do not know that they did.

Q. Have Robinson, Haines, and Ranney, and their successors, been lumbering on this property from the time of your conveyance until now, and are they still conducting a lumbering business upon it?

A. I so understand it.

Q. What did you do with the twenty-thousand-dollar Robinson mortgage, and the lumber and personal property of various kinds, transferred and delivered to you by Oliver at the time with the real property?

A. I think there has not been anything done with the Robinson mortgage; I don't know that I ever saw a foot of the lumber after that; I suppose the personal property remains upon the premises, unless destroyed by use and time.

Q. How often have you been in the habit of going personally to the premises, since transferred by Oliver to you?

A. I think I have been there three times since.

Q. Who had the management of the business there?

A. George J. Robinson.

Q. Did Oliver ever make a proposition to Cunningham, Hunt, and Eschleman to take the property; that they should take the property?

A. He may or may not have suggested it; I cannot say positively.

Q. How early in '68 did you see Oliver in Buffalo for the purpose of making some arrangement about the property?

3135 A. I cannot say; I think in the fore part of the season; my impressions are the last of May or the first of June.

Q. Was a meeting held upon the subject at Hunt's in July, '68?

A. I have no means of knowing; I was not at such a meeting.

Q. Was Oliver staying at Hunt's at that time?

A. I saw Oliver at Hunt's at different times that summer, and at other times.

Q. Where did you and Oliver and Hunt meet before you started for Ossineke?

A. I think at Hunt's.
Q. Who else was present?
A. There were frequent meetings that summer; I cannot say who else was present at this meeting, if any one.
Q. When you came back from Ossineke, how soon did you have an interview with Hunt and Eschleman?
A. I don't remember.
Q. Were Hunt and Eschleman present at the time when you have said, in a former answer, you and Oliver negotiated the sale, and was Geo. W. Hawkins then present?
A. My recollections are that Hunt and Eschleman were in Buffalo, and were there part of the time when the negotiations were going on, but were not there all of the time.
Q. How far did they live from Buffalo?
A. They lived out on the railroad, somewhere from 20 to 25 miles from Buffalo.
Q. Did they not come to Buffalo for the express purpose of being present at the negotiations?
3136 A. They were often there, but I cannot say whether they came for that express purpose or not.
Q. When did your open interest in the firm of Cunningham, Robinson, Haines & Ranney commence?
A. My first interest as a member of the firm commenced about the 1st of January, '69, I think.
Q. What amount of interest did you then acquire?

Question objected to as irrelevant.

A. A one-third interest in the business.
Q. Who held the other two-thirds?

Question objected to as irrelevant.

A. C. Haines & Co. had one-third, and George J. Robinson one-third.
Q. Who was interested in your one-third beside yourself?

Objected to as irrelevant.

A. No one.
Q. What did you pay for your interest?

Same objection.

A. I paid money and assumed responsibility and indebtedness of the firm equal to one-third relatively with the other parties.
Q. How much money did you pay and what responsibility did you assume?
A. I cannot say.
Q. Do you mean to say you cannot tell how much money you paid for your interest in the firm, or what encumbrances on
3137 the property you assumed, or what debts you assumed; in other words, what the consideration passing from you was when you entered the firm?
A. To make my answer more definite, I will say I put in very little money; that I assumed an undivided share as a member of the

firm of its legal liabilities; that I knew, as I supposed, at the time, in the main, in fact, and by report, what those liabilities were; that the liabilities exceeded what I expected, as I now believe, and I never was able to say what the exact amount of said liabilities were, and I am not now able to state what the exact amount of those liabilities were.

Q. For the third time I ask you how much money or what sum of money you paid when you entered the firm?

A. I don't know that I have been asked how much money I paid when I entered the firm. At the time of entering the firm I paid no money. Since that time I have contributed money in carrying on the business of the firm. Of my individual money I have paid in but little, and I have drawn but little from the firm. I mean to be understood that what I have done has been in my individual capacity. My cash account with the firm has been from $5,000 to $10,000, as near as I can come to it without any reference. Whether I have put in more than I have drawn out I am unable to say.

Q. Have you ever paid in one dollar at any time as and for the purchase-money of your interest in the concern and out of funds coming to you from some other source than the firm?

A. As I understand the question, I have not.

Q. Describe, one by one, the liabilities which you supposed you assumed at the time of your becoming a member, and which,
3138 as you have said previously, exceeded your expectations in amount ultimately.

A. I supposed the property to be incumbered, I mean the entire property, by the mortgage to Hunt and Eschleman, amounting at that time to about $38,000, I think; by a mortgage and claim formerly given to C. Haines & Co., amounting to about $19,000; a mortgage given to E. and G. R. Haines, which was said to amount to from $10,000 to $11,000; I am not sure; a mortgage to J. B. Wayne & Co., for about $10,000 or $11,000; by a claim and deeded interest of George J. Robinson of about $20,000 to $22,000, and the indebtedness of the firm of Robinson, Haines & Co., which was represented to me to amount to about $5,000 to $10,000 in the aggregate as represented to me; the claims amounted to between $105,000 and $110,000; the sum that largely exceeded my expectations was the indebtedness of Robinson, Haines & Co., as I believe.

Q. Was there any writing executed between you and Robinson, Haines & Co., setting forth the terms of your partnership connection and the incumbrances to be paid by them, or by you and them?

A. There was a writing made setting forth our partnership relations; what the specifications were as to the incumbrances to be paid I am unable to say, but my recollection is that it contained no specification requiring either member of the firm to pay or assume any of the liabilities individually—I mean the liabilities of the firm.

Q. Are you able now to produce that writing or a true copy thereof?

3139 A. I am not.

Q. Will you send to your counsel hereafter, or to the master

taking this evidence the original or a true copy thereof to be attached to and made a part of this evidence?

Question objected to on the ground that it relates to no fact to which he can be properly interrogated—that it is not relevant to the issue, being a paper relating to matters outside of the case.

A. I am not prepared to answer, but will act under advice of counsel.

(The counsel for complainant here gives notice to the witness and the counsel for defendants that he will ask the master to report specially the matter of the last several interrogatories respecting the partnership and the writing at the next session of the court, and will move the court upon said report for an order compelling the witness to produce the writings called for, or a true copy thereof, or show cause why he should not be attached in default of production.)

Q. Did said writing contain any provision as to the assumption and payment by the firm of the existing incumbrances named by you?

Question objected to, as it cannot be put until the writing is produced.

A. I cannot state.

Q. What arrangement did the firm, or any member of it, make with any of the holders of any of the incumbrances with regard to extensions, mode and manner of payment or collection of interest or principal?

3140 A. I cannot say whether I have any personal knowledge of any definite arrangement.

Q. Have you any personal knowledge of any indefinite arrangements or understandings, expressed or implied, in writing or verbal?

A. I cannot say that I have.

Q. Why, then, did you employ the phrase definite arrangements?

A. I had no particular object, and only stated it as I considered it a proper answer.

Q. Do you state upon your oath that you bought a third of this property, subject to a large overdue incumbrance to your father-in-law, without having any understanding with him as to the extension or the foreclosure of the same?

A. I do.

Q. Did you have any understanding with yourself as part owner of said incumbrance that it should not be foreclosed, and did you agree with your partners to that effect?

Question objected to, that the witness has already shown that he was not at this time a part owner of said incumbrance; that counsel are bound by such reply, and the question is therefore inadmissible.

A. I did not.

Q. You have heretofore stated that the firm paid nothing of principal or interest upon any of these incumbrances, as I understand

you; how do you account for the delay and forbearance to foreclose on the part of the holders?

3141 Question objected to on the ground that the witness is not bound to account for the action of third parties, and, further, that it is legally impertinent.

A. I do not know.

Q. Did you have an interview in the latter part of the year '68 or '69 with the holder of one of the incumbrances, J. B. Wayne, concerning a settlement of his mortgage?

A. My recollection is that Wayne called at my house in the latter part of '68, and while I was negotiating, under the advice and consent of Oliver, for the sale of the property, to talk to me about his claim.

Q. Did you make any arrangement for extension with him?

A. I did not.

Q. Did you make any arrangement at all with him?

A. I think not.

Q. Did Garrett B. Hunt and Calvin Haines come to Detroit on the 7th day of January, 1869, and settle with the said Wayne the said incumbrance, a proportion of which you have said, as I understand you, you assumed when you acquired an interest in the firm of Cunningham, Robinson, Haines & Company?

A. I do not know that they did; I was not in Detroit at that time.

Q. Give the date, the day of the month and year, when you acquired your interest in the firm named.

A. I cannot say positively, as I have no data to refer to.

Q. Was it not before the 7th day of January, 1869?

A. It may or may not have been, but I think about that time.

3142 Q. Did Garret B. Hunt indorse two notes on or about the 7th day of January, A. D. 1869, executed by Cunningham, Robinson, Haines & Company, for about $1,700 each, delivered by said company to James B. Wayne, for machinery to go upon this property?

Question objected to as irrelevant.

A. I do not know.

Q. Do you know that said notes were given at all?

A. Not at that time.

Q. Do you know now?

A. I mean to say that I do not know that the notes were given at that time.

Q. Do you know now that they were ever given?

A. My recollection is that two notes for about $1,700 each were drawn by Cunningham, Robinson, Haines & Company about the 1st of April, 1869, and indorsed by Garret B. Hunt, and by me brought to Detroit about that time and left with Mr. Duffield, to be delivered to Wayne upon the completion and delivery of certain work and machinery.

Q. Did you or Haines & Ranney, in the summer or fall of 1868,

employ a man by the name of Johnson, at East Saginaw, to examine about nine thousand acres of this property, and report the pine thereon?

A. I did not, and don't know that Haines or Ranney did.

Q. Did George J. Robinson, in the latter part of September, 1868, have an interview with you with reference to organizing a new and powerful company, of which you were to be a member, to operate the Oliver party?

A. He did not.

3143 Q. At what time did you have such interview with him?

A. I never had such interview with him, to my knowledge.

Q. Did you ever give him any assurances upon that subject at any time in person or by letter?

A. I never did, to my recollection.

Q. Did you have any talk with him upon the subject prior to the 10th day of September, A. D. 1868?

A. I don't remember that I ever did.

Q. Please refresh your memory and see if you cannot remember.

A. I have not the most indistinct recollection of any conference with him upon that subject.

Q. What was the reason you were unwilling to put the stipulations between you and Oliver in black and white—in writing—when you received the transfer from him to you of all his property?

A. Oliver had repeatedly informed me of his embarrassment, of his straitened circumstances. He had frequently been at my place. My reason was that what I did was at the solicitation and for the benefit of Oliver, and in so doing and suffering to be done I did not purpose to involve myself in personal liability, and to go no further in the matter than to accommodate and benefit Oliver in his then straitened situation. I so informed Oliver at that time that I would not sign any agreement on my part; that he might do what he thought best; that if he did not think it best to make the conveyance he should not by any means do it. This was said to Oliver at Ossineke before the conveyance.

3144 Q. Were Hunt and Eschleman at that time engaged in any business that required attention?

A. They were farmers.

Q. Had they other sources of income to your knowledge beyond the interest upon their mortgages or other loans?

A. They each had farms of seven or eight hundred acres each, which they managed, and which afforded them large incomes so long as I have known them.

(Signed) HENRY S. CUNNINGHAM.

Subscribed and sworn to before me, this 11th day of July, A. D. 1871.

(Signed) ADDISON MANDELL,
Master in Chancery.

On being cross-examined by Mr. DUFFIELD, of counsel for defendants, the witness says:

I live in Buffalo, in the State of New York; am of the age of forty-three (43) years; and do business in said Buffalo.

Q. Was the $2,400 admitted by you to have been received from Oliver, all the money paid by him on the $35,000 mortgage?

A. Yes, sir; it was all I know of his ever paying.

Q. Is he entitled to any other credit thereon in any way?

Question objected to as not proper cross-examination.

A. He is not, to my knowledge.

3145 Q. State whether the assignment of your interest in that $35,000 mortgage was made as collateral security for moneys to be advanced to you by the assignee, or was it an absolute transfer, and intended when made to be such?

A. It was in no sense made as a collateral transfer; but it was an absolute transfer, and intended when made to be such.

Q. When and where was this assignment executed?

Objected to as not proper cross-examination.

A. The assignment was made in the city of Buffalo, in the office of B. H. Williams, on the 2nd day of September, A. D. 1868.

Q. Did you at any time, and if so, when, communicate to Mr. Oliver the fact of such assignment having been made by you?

Question objected to as not proper cross-examination.

A. I did so tell him; some time between the 5th and 8th days of September, 1868, and prior to Mr. Oliver's execution of the conveyance.

Q. Did you abate anything, and if so, how much, for your interest in said mortgage?

Question objected to as not proper cross-examination.

A. I did not abate anything.

Q. Did you receive payment for this interest down, or if not, how did you receive payment, if payment you have received?

3146 A. I did not receive payment down, but have since received money of the parties; I sold my interest in the mortgage, too, and at the time of making the transfer I had no immediate use for the money, as I remember, and expected to have received it before this time.

Q. When did you expect to receive it. From and to whom do you look for the unpaid portion of it?

Question objected to because it proceeds upon an untrue implication that the witness has received payment of some consideration for his assignment.

A. I expect to receive it from Garrett B. Hunt and Jacob Eschleman, and I look to them for the unpaid portion of it. I at the time looked upon them as perfectly good for the amount, and do so still.

Q. How was your account kept with them in reference to this matter, if any account you had in respect to this matter?

Question objected to unless account is produced.

A. In keeping my account I have charged them, as I remember, for the amount of my interest in the mortgage, and have give them credit for money received.

Q. What, if anything, did Oliver say to you about an early payment of this $35,000 mortgage by him or his vendees, about and previous to the execution of his conveyance to you?

Question objected to as not proper cross-examination.

A. As I remember, there was considerable moneys, principal and interest, past due upon the mortgage, and during the summer, while talking in relation to the matter at different times, Oliver expressed himself as hopeful that the property might be sold to advan-
3147 tage, and would be soon, and the claims upon this paid up; and he expressed himself very positively that it would be; he was very sanguine.

Q. Have you that account that you refer to between yourself, Hunt, and Eschleman with you?

A. I have not.

Q. You have said that your interest and motive in going from Buffalo to Alpena, and becoming trustee for Oliver, was at Oliver's request, and to save him and his interests; will you state how and what was thus done between you and Oliver?

Question objected to as not proper cross-examination, because no part of the direct examination related to the subject-matter.

A. Oliver, during the summer of 1868, had at different times stated his grievances in regard to his business matters to me, and had enlisted my feelings in his behalf. I had been with him to see parties in regard to purchasing the property, at his request, with whom I was acquainted and he was not, and had known from him that he had seen several other parties, but had effected no sale. I learned from him that he had agreed to let parties (C. Haines & Company, of Lockport; who else were interested with them I don't know) have the property at a certain price, which I don't remember, but which he assumed was below its value, within a certain time. I don't remember for the length of time, unless he could make a sale to other parties to better advantage, which time was about to expire when I left Buffalo to go to Ossineke at his request. Oliver conveyed by several deeds to me certain property, which property I supposed then, and sup-
3148 pose now, to be the Devil river property, so called. He executed a bill of sale to me of the personal property there. There was nothing done there on my part except to say to Oliver, before the execution of these papers, that in looking over the matter, and from his statements as it stood, there was no possible chance for him to save anything out of the property; and I further said to him that I did not know enough of the matter and business to say whether anything could be saved in any event, but that if he saw fit to make the transfer under such circumstances he could do it. It was understood and talked between him and me that it would give a further opportunity to make a sale to better advantage by having time to do it in. He assumed that there were a number of parties

that he had seen and got interested, and it was getting just the time of year when they could and would give their attention to the property. I received this property in trust for him. Oliver had no personal interest whatever in the property; the conveyance was made for his interests, and to give him further time to realize by sale what the property was worth.

Q. Was there anything said by him to you at this time as a reason why you should take this conveyance; that if you did not his creditors would lay hold of the property?

Question objected to as relating to no part of the direct examination, or to any conversation or matter inquired of in the direct examination, and also as indicating to the witness the answer desired.

A. Oliver had told me that his creditors were crowding
3149 him, and were, as I remember, threatening to prosecute him and throw him into bankruptcy; that he feared suits may have been commenced against him. He did not know but they had.

Q. Was there any agreement between you and Oliver that you should buy this property, pay a consideration for it; and, if so, what that consideration should be?

Question objected to; that it is not proper cross-examination.

A. There was no such agreement, and no such intimation or promise on my part, and no such intimation on the part of Oliver, that I remember.

Q. You was asked whether you paid Oliver anything when you received a transfer of this property, and are asked to enumerate the incumbrances upon it. Now, will you state just what the property, so alleged to have been transferred to you by Oliver, really consisted of, beyond such incumbrances?

Question objected to as not proper crosss-examination.

A. I find that the property was not worth the incumbrances, in my estimation, and Oliver conveyed to me a three-fourths interest in the property, subject to the incumbrances. The other one-fourth was owned, as I understood and understand, by George J. Robinson. Those incumbrances were the same I have given in answer to Mr. Russell's interrogations. The mortgage from George J. Robinson to Oliver, and assigned to witness, was conditioned to be paid out of the profits of the business. There has never been any value
3150 in that mortgage, to my knowledge. To my knowledge there has never been any profit to be divided.

Q. What benefit or advantage has accrued to you personally from this arrangement that you say you went into for Mr. Oliver's interest and benefit?

Question objected to as not proper cross-examination.

A. Not one dollar or cent.

Q. Was there any benefit or consideration ever claimed by Oliver to accrue to him for this interest other than such as was stipulated for in the Buffalo agreement?

Question objected to as not proper cross-examination.

A. Not to my knowledge; he never claimed any from me; I don't know that he has ever claimed any from any other parties; I never heard that he had.

Q. Was the Buffalo agreement made with his knowledge and assent, and what did he say to you about it after it was concluded?

Question objected to as relating to no part of the direct examination.

A. It was made with his knowledge and consent; he was seen and talked with as to the whole matter as it progressed by me, and also with the parties to whom the property was being sold; the matter was fully discussed and as close a bargain made with those parties as we could make with them; after the final completion of the matter Mr. Oliver came to my house, and the deed had been
3151 executed to the parties; Mr. Oliver said he was glad the thing was closed up; he said he would not take the property and pay its encumbrances to day.

Examination adjourned until to-morrow morning at 9 o'clock.

FRIDAY MORNING, *May 12th*—at 9 o'clock.

Examination resumed.

Q. You have said you refused to sign any paper in Mr. McMath's office; state why you said so.

A. I had told Oliver that I would not at Ossineke, at the time he made the conveyances; it was understood that I would not do it.

Q. When you say you got nothing and expected to get nothing on the conveyance made to you by Oliver, state why you so expected.

Question objected to as not proper cross-examination.

A. All the answer I think I can make to that is that all the time I considered it Oliver's property; that as I had paid nothing and agreed to pay nothing, I had no equitable rights.

Q. State whether after the conveyance from Oliver, he, as well as yourself, made efforts for the sale of the property; and, if so, when and to whom?

3152 Question objected to as not proper cross-examination.

A. Oliver came directly with me from Ossineke, after the execution of the papers to Flint, to see parties he had agreed to see, for the purpose of effecting a sale of the property. I don't remember the names of the parties, but he mentioned them to me. I think he told me that Patrick had seen the parties and arranged to have them come there; that he was expecting them there about that time. I urged him to make a sale at Flint to the parties there, and left him there. I have personal knowledge that Oliver offered to sell the property to Wheeler and Wesson, lumber dealers and mill owners, of western New York. This was after the Buffalo agreement,

and before the expiration of the thirty days allowed by the agreement to sell to other parties. I assisted him in trying to make the sale. My recollections are that he offered the property to them at the same price at which he had offered it to Robinson, Haines & Company. Wheeler represents that he had seen the property or a portion of it. They refused to accept the offer, and asked Oliver why he did not let the other parties have it. He said he would rather sell it to outside parties at the same price.

Q. At the time that you entered into this arrangement with Oliver at Ossineke, did you then or ever agree with him as a part of the arrangement to take an interest and run that business as his successor, or anything of the kind?

Question objected to as not proper cross-examination.

3153 A. I did not.

Q. Who has charge of the books and papers of Robinson, Haines & Company, and where are they kept?

Question objected to as not proper cross-examination.

A. The books of that firm, in connection with their business at Ossineke, are kept at Ossineke by George J. Robinson, and are in his possession.

Q. State what advantage or benefit, if any, to your knowledge, has ever accrued to Robinson, Haines & Company, or Cunningham, Robinson, Haines & Company, under the sale made to them of this Oliver interest.

Question objected to as not proper cross-examination.

A. None, to my knowledge. The firm of Robinson, Haines & Co., at the time I executed the transfer, verbally promised me that they would sell to Oliver at any time, within a reasonable time, the property upon the same terms upon which they received it. I never asked for such retransfer, and have known Oliver to ask for it. The firm of Cunningham, Robinson, Haines & Co., some time since, made the same offer to Oliver's legal counsel. I mean his former counsel; they to give a sufficient bond to turn over the entire profits of the business, faithfully account for everything they had received, only asking a reasonable remuneration for managing the business, and make a deduction therefrom of $5,000. This offer was made through their counsel, the Messrs. Duffield. They will still do better than that.

(Signed) HENRY S. CUNNINGHAM.

3154 On redirect examination witness states:

Q. Was your original interest in the Cunningham, Hunt & Eschleman mortgage an equal one-third?

A. It was.

Q. When you professed to have assigned to Hunt and Eschleman, did you take any written obligation from them for the payment of any sum of money at any time fixed?

A. I did not.

Q. How can you give the date of your assignment, when you say you cannot give the date of your quit-claim deed at the time of the sale?

A. My attention has been quite recently called to the time of the date of the assignment, which led me to refer to data, memoranda, and books from which I learned the date of that assignment.

Q. When you answer, "I find the property was not worth the incumbrances," do you mean that you so find since you came into possession of it yourself; and, if so, why do you hold on to it?

A. I have learned more of the value of the property since I came into possession of it, and, hold on to it for want of purchasers.

Q. When you answer that Oliver offered the property to Wheeler and Wesson for the same price for which it was sold to Robinson, Haines & Ranney, have the goodness to state what that price was for which it was sold to Robinson, Haines & Ranney by you, and the price for which it was offered by Oliver to Wheeler and Wesson.

3155 Question objected to, because the terms of sale to Robinson, Haines & Ranney, were committed to writing and not produced.

A. My answer is, that it was according to the terms and stipulations under the Buffalo agreement.

Q. I ask the second time, what was the price referred to by you, in your answer to Mr. Duffield, was it money to be paid, was it the assumption and payment of the existing incumbrances upon the property, or what was it; I mean the price named in the offer, sworn to by you, as made by Oliver to Wheeler & Wesson?

A. I mean to be understood that the offer made to Wheeler & Wesson was upon the same terms and subject to the same conditions and incumbrances as enumerated in the Buffalo agreement. That the matter was talked up with pencil in hand, and the amount of the incumbrances enumerated and estimated, and the total amount of legal incumbrances found.

Q. Were not the proposed purchasers to pay these incumbrances and save Oliver harmless against them, and were they to pay anything more than that?

A. They were to take it, subject to the incumbrances, as I buy a farm subject to a mortgage, and they were to pay no more of the incumbrances than as required by the Buffalo agreement.

(Signed) H. S. CUNNINGHAM.

Subscribed and sworn to, this 12th day of May, A. D. 1871.

(Signed) ADDISON MANDELL,
Master in Chancery of said Court.

3156 GEORGE W. HAWKINS sworn for complainant:

Mr. Hawkins on being called says he would like to talk with Cunningham before he is sworn, and thereupon retires from the room with Cunningham.

Q. By Mr. RUSSELL: Will you look at that paper (complainant's

"Exhibit F"), being the proposition of June 9 to Hunt and Cunningham?

A. I think that is the paper that I had.

Q. From whom did you receive it, and when and where?

A. I got it from Oliver, at Ossineke. It was in June somewhere about the date of the instrument.

Q. For what purpose did you receive it; to do what with it?

A. To fetch it down to see if Cunningham and the others would not accept of the proposition of it.

Q. Who do you mean by the others?

A. I meant Hunt and Eschleman.

Q. Will you state if you know whether the two Robinsons, or either of them, or any other persons—G. B. Melville or any persons at Ossineke—were aware that this paper was delivered to you, and what was in it, and what you were to do with it?

A. Not that I know of.

Q. Do you know whether either of these persons saw or read the papers?

3157 A. Not that I know of. I never saw them read it. I never saw any one else have it.

Q. Do you know any statement of George J. Robinson whether he knew that the paper was delivered to you?

A. Not that I know of.

Q. Will you state what you did with that paper after you received it?

A. I came down to New York State and drove over to Hunt'-, and he was not at home, and I went to Lockport, and there Philip Ranney looked over this, and then I came to Buffalo and saw Cunningham and talked about it; and after he took the papers and looked at them and read them he said he didn't want to have anything to do with it.

Q. I did not ask you what he said. About what date did you show them to him?

A. I could not tell exactly. I think I was but ten or eleven days gone from up there. I went right back.

Q. After you showed that document to Cunningham did you show it to any other party?

A. Yes, sir; I carried it to Lockport and left it with C. Haines & Co. They wanted to look at it.

Q. Do you know what they did with it?

A. They brought them up here after they got through. Oliver wanted I should get them and I got them and they brought them up here.

Q. That was one paper. What do you mean by fetched them up?

A. The papers.

Q. Who went to Ossineke with it?

3158 A. Philip Ranney, Emory Haines and Son. I do not know his son's name.

Q. Do you know whether they left "Exhibit F" with Oliver? Did you go and get them?

A. They took one of the papers out; that was the list of the liabilities. Ranney took it out and left it down here. We came down with them when they came down.

Q. Then you got from Ranney at Ossineke and gave back to Oliver all of the papers which are attached together except the list of liabilities?

A. Yes, sir.

Q. When did you next see that list of liabilities?

A. I asked Ranney for it in Lockport, and he went and got it and brought it, and Oliver was there.

Q. How long after you got the other papers at Ossineke?

[A.] ——.

Cross-examined by Mr. DUFFIELD:

Q. You never showed this paper to Mr. Hunt?

A. No, sir.

Q. Did you ever show Cunningham anything except the last part of it?

A. I think they were all attached together until I got back to Lockport.

Q. Will you swear that you never showed Cunningham anything except the last two pages?

A. If I showed Cunningham any of it I showed him the whole, for it was altogether at that time.

Q. Will you swear that you showed him the whole?

A. I am sure that he saw it and read it over in his office.

3159 Q. Who was present?

A. I think Kilgrew came in while we were talking.

Q. Did he see what you had?

A. I cannot say that. He came in while we were there; while we were talking about it.

Q. What did Cunningham say to you when you gave him that?

A. When he had looked at it he said he didn't want to have anything to do with it.

Q. Did you ever understand that he expected any such proposition?

A. No, sir.

Q. How long after you had taken him this did you and he go to Ossineke together?

A. Some two or three months or over.

Q. Do you know what object Cunningham had or expected in going to Ossineke?

Objected to as not legitimate cross-examination, the witness already having been examined upon that subject.

A. The way I understood that, he was going up there and was going to be appointed receiver.

Q. Did he say so to you?

A. I cannot say whether I got it from him or not; I won't say.

Q. Did you know that he was going there simply to take the title from Oliver until Oliver could make the sale?

A. I did not expect that he was going to take the title.

Q. Answer the question—yes or no.

A. No.

3160 Q. Why did you take the paper to Philip M. Ranney?

A. Because he was in with Haines, and they had mortgages, and so on.

Q. In what condition was this paper when you got it? Was it just as it is now?

A. Pinned together, just about as it is now.

Q. Was it in an envelope?

A. I believe it was.

Q. Was the envelope broken?

A. It was not sealed up.

Q. Were you coming down from Ossineke on your own business, or on this particular business?

A. I was sent down by old Mr. Robinson to try to get the parties to foreclose their mortgages?

Q. Then you were not coming down on your own business?

A. No, sir.

Q. Were you not coming down expressly to present this paper?

A. No, sir.

Q. Why did you go with the paper yourself to Hunt?

A. At the request of Oliver.

Q. How far is Hunt from your place?

A. About five miles.

Q. Why did you leave this paper with Ranney when you were requested by Oliver to give it to Hunt?

A. Because Ranney wanted to look it over, and was going up there.

Q. You considered that Oliver's private paper, did you not?

3161 A. I did not consider anything private about it.

Q. You did not consider it was your letter?

A. Not particularly mine.

Q. What right had you to give it to anybody else?

A. I do not know that I had any right.

Q. What made you do it?

A. I do not know how to answer it, really, without it was because I had a mind to; I cannot answer it in any other way—because he wanted to look at it; that is what I have answered.

Q. You say you gave this paper to Cunningham, and he looked it over here in Buffalo?

A. Yes, sir.

Q. And afterwards you say you took it back and left it with C. Haines & Co.?

A. Yes, sir.

Q. Will you explain how it was that Cunningham did not keep the letter that was addressed to him; how it was that you took it back?

A. He said he didn't want to have anything to do with it, or anything of that kind, and he gave me the papers, and I took it back.

Q. He would not even take the paper?

A. He didn't keep them.

GEORGE W. HAWKINS.

3162 *Testimony taken on the part of the Defendants, at the City of Buffalo, August 27, 1871, before Jas. Sheldon, U. S. Commissioner, by Charles Flowers, Stenographer.*

DAVID D. OLIVER *vs.* GARRET B. HUNT *et. al.*

HENRY S. CUNNINGHAM sworn for defense:

I am acquainted with the complainant and the defendants. I first became acquainted with Oliver in 1864; it may not have been until 1865. I know the Devil river property, the real estate that was mortgaged to myself and Eschleman. I first saw that property in 1864. The improvements that were then upon it consisted at that time of a dwelling-house, some outhouses, barns, and a dilapidated old water mill, and some little houses that had been occupied as dwellings. I think there were none occupied at that time. I think they were vacant. In 1868 I again visited the property, the first of September. At that time, in addition to the buildings that
3163 were there before that I mentioned, was a steam mill, partly constructed. I think it was running with two circular saws; am not positive. I know there was one, and I think two; it had the propelling power, the engine, boilers, and machinery usually in such a mill, I suppose; I think there were four boilers in it at that time. I think it was constructed so that there might be four more used; but not to the best advantage, so that they might be used. The dock was then principally an old dock, which had been used in connection with the water mill. It was not much of a dock, so that they got to it. In getting lumber away they were bothered a good deal, as I understood, in getting lumber away successfully, in loading vessels at the dock 2. I don't recollect the values that were put upon the property, and the improvement by the complainant in cross-bill.

Q. He states the frame of the steam mill was worth $5,000; engine, horses, and machiuery, $6,000; the railway dock, platform, slides, and other improvements erected by Oliver, cost $8,000; dwelling-houses, barns, and blacksmith shops, etc., besides water mill; that the water mill was reasonably worth $6,000; that the steam saw-mill was reasonably worth $30,000; and the lands on which the mills were situated were worth $13,000; and the pine lands were worth about $160,000. In your judgement is that the correct statement of the value of the property?

A. No, sir; I don't consider it so.

Q. Will you state what your opinion of the value of them was, dividing them into water mill, steam saw-mill, and lands?

3164 A. I never considered the water mill of any value. From its history and appearance I judge that it had been a detriment to Mr. Oliver always in managing it; that it cost him more than it was worth. He had made money outside and he had spent it in contracting to run that mill, and there was no value in it to anybody.

Q. Why was there no value in it?

A. There was but little water there. My reason for saying there was no value is because I had understood so, and from the appear-

ance I judged it was correct. The mill had never been made to pay what it had cost to get out timber and lumber there and manufacture it. There was not enough water to run it; only in the spring and fall that it could be run, as I understood.

Q. What would you value it at?

A. It was not worth anything. I considered it valueless in connection with the other property. I supposed it to be abandoned, and it was considered valuable. It was not understood by the parties that were working it that there was any value in it.

Q. What was the steam saw-mill worth?

A. From what I had seen of other mills and what I saw of that I don't think it was worth at that time, as it stood, to exceed $20,000. There was no gang saw in it.

Q. What were the lands that had those mills and the dock on, with their improvements other than the two mills?

A. The lands themselves possessed no value beyond being grounds occupied by the mill and its surroundings. I don't think
3165 that a fair appraisal of that property independent of those mills would exceed seven or eight thousand dollars.

Q. Did you look at the pine lands at all when you were up there?

A. Not at that time. I had been on four or five thousand acres some three years before that.

Q. What were they worth, in your judgment?

A. Judging from what I saw of them then, and judging from what I understood had been lumbered off, I don't think that anybody who would examine them would think they were worth at that time to exceed $6,000.

Q. Will you state as fully as you can what led you to Ossineke in the fall of '68, with whom you went, and what you did there—first, where you started from and at what time?

A. I went there at the instance of Oliver. I left Buffalo on the night of the 2d of September, '68. I met Oliver at different times, and it seems to me he manifested a good deal of anxiety and trouble about his business affairs up there. He came to see me at different times, and I went with him to see Mr. Hunt, and he stated his trouble, the situation of affairs; that his property was incumbered, and that he had taken in a partner, and that that partner was ignoring him—that is, Geo. J. Robinson, and the claims against the property were pressing him, and that he wanted to talk about it. He didn't know how to fix it. He had different plans, and there was this, that, and the other thing. There were various things suggested by him, I think. We met at Mr. Hunt's, and Hunt and Eschleman would be there. We all expressed our
3166 sympathy for Oliver and in his behalf to his face and in his absence. A brother-in-law of his by the name of Hawkins was frequently with him, who, we understood, had the care of Oliver's father and mother. I knew at the time that Hawkins had some money in there and he was with Oliver, and that was talked of—that it was unfortunate that they were old people, that he had a good deal of money in there, and Hawkins felt very bad under the circumstances. I went to Oliver at different times to see about buy-

ing the property and he talked to me; I remember I talked to him about taking hold and taking an interest in it; I don't know that I ever gave him any encouragement in that direction; I don't know that I ever felt that I wanted to. Well, we together went to see Jerome Pierce and presented the thing to him and tried to get him to take hold of it, to go and look at the property and buy it; he is an extensive lumber dealer here and a mill owner; by that I mean Oliver and myself. I heard that there were other parties went up there to look at the property through Oliver, and I learned that he had a certain talk with the Haineses, and they were going up there to look at the property with a view to buying it, and that they took Mr. Evans with them. After they had been up there—I think it was after they had been up there, as Oliver told me—I don't know that I heard it from other sources—but they had a meeting at Haines', as I understood it. Mr. Evans and all the Haineses —E. G. R. and Calvin Haines, and Ranney, and I understood from Oliver that they made some sort of an arrangement whereby they were to have the property if they wanted it
3167 within a certain time; it ran along, I don't remember how long that was to be; I can't tell. Whether I saw Oliver frequently from that time I can't say, but I think he was to have the right of selling it to other parties; it seems to me he went to Rochester either at that time or after another transaction, and he told me what arrangement he made with them and he thought it was the best thing he could do; but it seems to me that I claimed to him that I had a sort of understanding with them that I might sell it to other parties if I had an opportunity, but at the same time they were not bound to buy it, only had the refusal of it; and they sort of agreed upon terms if there was anything done between them it should be done in a certain manner. About the time that that time expired, I think I understood from Oliver that they had not decided to do it, and the question whether they were not going to pitch on to him and not come into that arrangement, but undertake to take the property and force up their claims; that is my recollection. He came to me and seemed to be a good deal disturbed about it, and very much excited; told me that he kept staving off matters in Michigan that had to be attended to and he feared the result; he didn't know what to do, and insisted upon my going up there immediately—there was no time to be lost.

Q. Was there any definite plan then as to what you should do up there talked of between you?

A. I don't think there was; I don't think that he and I, before I went up there, had any definite idea of what should be done; I don't think that he had any definite idea. He told me at this time that there were parties that he had seen—parties that had been
3168 written to, and he was annoyed that they had not come round. "I am forced into this trouble; I got this thing all settled, and there can't be anything done because they didn't come round in time. There are good men that want the property and want to take hold of it and give me a fair price. They are men that have the money and got money to invest that want the property."

Some Western men, I understood him. "If I had time to do this I could accomplish the sale. I can't do it; it will take time to get these men round." As I say, I so understood both Hawkins and Oliver in this matter. Hawkins before that had told me—the winter before I was there—he told me he had money in there, and he said the business was getting beyond his reach, and he thought Oliver was wild and fanciful in his opinions about the property and was running it headlong.

Q. What Hawkins says to you is no matter.

A. I learned that that was the situation, and I so understood from what I learned that Hawkins was interested, and I had advised with him what to do when I was in the firm with Oliver. I went up, or started from here; Oliver went before me to see some parties that he expected to meet, to talk about the sale of this property; I am very positive about that. My recollection is that it was at Flint, but I am not sure of the place; it may have been at Pontiac, and it may have been at Wallaceburg. He talked of seeing parties at all those places at different times; I don't know but he did at Saginaw and Bay City, but I am not positive about that; he went before me.

3169 On the night of the 2d of September I left here on the evening train at 7 o'clock, and went to Suspension Bridge. I there met George W. Hawkins. From there I went through to Detroit; arrived at Detroit about 7 o'clock the next evening. I think I waited about the depot, took breakfast on the boat, and waited until the train went to Bay City. I took the noon train for Bay City, and arrived there about 1 o'clock that afternoon. Hawkins and I took the propeller Huron, I think, about 1 o'clock for Alpena. By this time I had not met Oliver anywhere; I think our arrangements were to meet him at home; I am not positive about that, though. It seems to me that Oliver said we might meet him on the train; if he did not come to the train we might consider him gone. I don't recollect meeting at all until we got to Devil river. On the morning of the 4th we arrived at Alpena, I should say, about 5 o'clock. That morning we left in a small boat from there, and went to Devil river; I there met Oliver. I stayed at his house that night. I think I looked out about the property some that day, the 4th. I think we went around the mill; I am not sure. I stayed there the 5th, and during the afternoon of the 4th and 5th was in consultation with Oliver, more or less. This matter was canvassed as it had been before. Oliver proposed to me, during that conversation, that I should take the transfer of the property. I think we talked some about what had been said here, whether I had learned anything more with regard to what the Haineses were going to do. There was a general talk about the business. We had talked the business over here, and we talked there in the same strain. He then proposed to me

3170 to take that property, everything there was there, real and personal, and I said to him this way: "Mr. Oliver,"——

Q. You said he proposed you should take a transfer of the property—all the personal?

A. He proposed in pursuance of this plan—in this conversation we talked about the sale of the property, what the chances were and

what the prospects were—it was a rehash of what had been said, that he had to have time, and there was no question, no doubt, but what the property could be sold, and he was "impressed;" I knew what Oliver meant from that, that it was coming out all right; that the transfer and sale of the property could be made to good advantage if he could only get time to go on and get these parties there, so that he could keep these men out of the way, that the property might be sold; there were parties enough that wanted it; all it wanted was to take time. He says it takes time to get around; you can't get men to take hold of a big matter like this in a day; you have got to wait; they are men that have got other business; they can't come here, but the property will be sold. He proposed that I should take this property in pursuance of that arrangement; that I should make a transfer to him for this purpose, and he did not intimate to me at that time for any other purpose than the purpose for the sale.

Q. Was there any conversation about any other way in which you should do it?

A. No, sir; not that he talked to me; my prejudice was in his favor. I talked to him of these men that held the claim and were pushing him up; that it would put a new impediment in the
3171 way of pushing the thing, and that they would stop and look to see where the thing was; I said to him in closing up, "Mr. Oliver, certainly the way this thing stands, if they pitch on here, there is not anything in it for you; that is the way the thing looks to me, and if you see fit to go on and do this—to make this transfer—there may and there may not be anything for you; I can't tell what the result will be." But I said to him, in taking that view of it, you can't lose anything in it, and you may go and save something on it; they will give you the time, and I don't see that it will do any harm.

Q. Was there any conversation about your running that business, stepping into his place in the business?

Objected to as leading.

A. No, sir; only my understanding with Mr. Oliver. I never talked that I was going to step in there and run that business; I never had any such intention. I had been offered that before and frequently refused. I rejected the offer six or eight months before—before there was any meeting nere. He said I had better take hold of it, and I refused to do so.

Q. Was that offer repeated at the time you were up there?

A. No, sir; this had all been talked of, and I refused it at different times. I went there on a different mission. I went there for the purpose of putting this thing in the shape I have stated—for that purpose and no other.

Q. What was done?

A. Mr. Oliver then told me he would go to work and draw
3172 up the papers. Saturday was the 5th, and the next day was Sunday, the 6th. On Sunday Mr. Oliver went to writing; don't know what he was writing. I was invited by some parties to

go out huckleberrying, and was gone the most of the day. I think I went with Robinson and Melville and Melville's wife and another lady. I think there were six went out besides myself. I came in and stayed at Oliver's house that night. On Monday Oliver's folks went out. I went out again with them after berries. I came in Monday night and stayed at Oliver's again. On Tuesday morning, perhaps Monday night, I am not sure about that, but I think nothing was ready until Tuesday morning. I didn't know then that the papers were all ready. I don't think they were. I think, generally, Oliver told me what the papers were that had been drawn. I think that I asked no questions in regard to the papers. Oliver spoke of Melville as being a notary public. He called in Melville and some subscribing witnesses to those papers.

Q. To what papers?

A. The papers he had drawn—the deeds that he gave to me.

Q. (Presenting certain papers to witness.) Are those the papers?

A. I judge from those papers that they are the papers that were executed at that time.

(Bill of sale marked "Exhibit A," warranty deeds marked "Exhibit B" & "Exhibit C," warranty deed marked "Exhibit D," quit-claim deed marked "Exhibit E," assignment of mortgage marked "Exhibit F," and assignment of contract marked "Exhibit G.")

Q. When were these delivered to you?

3173 A. On Tuesday, the 8th day of September. The acknowledgments were taken there by Reuben E. Gallup, I think. He was a notary public. All I saw of Melville at that time, I think, was that Sunday that we went after berries with Robinson.

Q. Do you know who wrote these papers?

A. I know that Oliver had them. I know they are in his handwriting. I saw him writing them. "Exhibit G" is not in Oliver's handwriting, excepting the indorsement on the back (which is the assignment of the contract). These acknowledgments were taken to Oliver's house, and the papers were given to me in Oliver's house, I think. They were delivered Tuesday, I should think, soon after dinner. Then Oliver and I went to Alpena in a wagon very soon after the delivery of these conveyances. We left these papers at the office of the register for record. We stopped there that night, I think, and the next day we started for Bay City. I should say it was some time before dinner, into the day pretty well. I remember meeting some parties there. I think the boat usually leaves early, but I think it was late that morning before it left. Oliver went with me to Bay City. We stopped at Bay City a little while. We were there until the train went; I forget now what time. I think I stayed at Bay City over night. It was either that time or another time. I think I met a party there that time and stayed over night. Oliver came home with me as far as Flint.

Q. Did he tell you what was his purpose in stopping at Flint?

3174 A. On the way down our whole talk was about the property; we were talking about that—we had talked about that; so far as talking about that, he came down to see some parties that

he had agreed to meet and were going to Flint. I think Wm. S. Patrick was the man that was making the effort for him; was going in with other parties to buy the property. There were other parties that were coming up from Harrisville, or had come there; my recollection is that the parties he was to see at Flint were not the parties he had seen at Harrisville; he had encouragement from them, and he thought they wanted the property if the other parties did not; Patrick was going to interest himself in the property; he made a strong effort to effect a sale of the property; he considered him a good man to work up the sale; he told me his purpose was to meet Patrick and see those men to effect the sale of this property; I came on home; I received a letter from East Saginaw from Oliver, dated the 12th of September; I think I parted from him on the 10th; I received this letter at Buffalo after I had returned, "Exhibit H."

Q. Between the receipt of that letter and your leaving Oliver at Flint had you seen or heard from him at all?

A. No, sir; I received a letter dated the 15th from Oliver from Bay City, "Exhibit I;" also a letter, date October 6th, "Exhibit J."

Q. Up to the receipt of this last letter had you seen anything of Oliver?

3175 A. Yes, sir.

Q. About how long was it after you left him at Flint until you saw him again?

A. It may have been ten or twenty days; he came to Buffalo; I telegraphed Oliver from here to Alpena, by Bay City, care of the Huron; my attention has not been called to that, and I have not the means of knowing what time that was; I have not got the telegram.

Q. What was the purpose of that dispatch?

A. I asked Oliver to come down here soon.

Q. Between this telegram and your leaving him at Flint, had you written him at all that you recollect of?

A. I may have written him and I may not; I have no recollection of it; it is quite likely that I did; I cannot say that I did.

Q. Prior to this transfer, will you state whether at any time you had any arrangement with Oliver, or any understanding by which you should take the transfer, except the one you have mentioned?

A. No, sir.

Q. Did you ever had subsequently to that?

A. No, sir; I did not intend to have and I never did; I did not know at that time anything about Oliver's title that he had conveyed; I did not know that he had conveyed to me; I did not look the papers over and did not know anything about it; since then my attention has been called to it and I have looked up the title; I never did until this last winter; I was in Alpena and I went with a man by the name of Johnson to look over the title to the outside lands, as he called them.

3176 Evidence as to examination of titles objected to, unless it is shown the witness is an expert in examining titles.

A. I employed Johnson and paid him for it.
Q. What was the result of your examination?

Objection to any evidence of Johnson's examination from this witness.

A. I went with Johnson to look them over, and saw the incumbrances; saw the situation, piece after piece; stayed with him while it was done. He was a judge of land, and knew what the property was. I followed him right through on that, and I made up my mind from the examination that all the property that Oliver deeded to me was incumbered for as much as anybody would give for it. There may have been one or two pieces that there was no particular value on, that were not incumbered, but principally it was incumbered by this, that, or the other thing. It was mixed; Hardwick had a mortgage on considerable of it. In some there was no title to Oliver, as Johnson showed me by the record. On others there was a title in him. For some he had a tax title; to others, the title was once good, but was mortgaged by him.

Q. As to the dates which you give of your trip from Buffalo to Ossineke, state whether you make that from recollection or whether you have a memorandum?

A. I have a memorandum, but I have looked at papers, money that I personally paid, a receipt that was dated on the 1st of September, when I paid $1,070, I think.

Evidence of receipt objected to unless produced.

3177 Q. Did you make any memoranda during your journey?
A. I made a memorandum at the time I started. I have that memorandum with me in my note-book.

Witness produces his note-book.

If these memoranda were not made on that day they were made on the day after. Substantially, I will say they were made at the time. You will find through the whole book that I kept a sort of memoranda of events. This book is my daily journal for the year 1868.

The leaves of the memoranda book marked "Exhibit K."

Q. Has it always been your habit to carry a book of that kind?

A. Yes, sir. Sometimes I have kept it more regularly than others, but I have kept one for the last ten years. Some of them are written over full and others not so full.

Q. Is there any business transaction that you recollect as occurring on the day that you went away other than this assignment of the mortgage?

A. No further than the money that I borrowed. I think I borrowed of Alonzo Turner $50. He gave me a receipt for some money. I paid him all the money I had the day before, and I went back to borrow some money from him, as I was short.

Q. Have you got that receipt which you got from him?

A. I think you have that; I do not think you ever returned it.

Q. Was there any other business transaction that you
3178 remember then occurring on the day you left Buffalo in regard to the money?

A. I do not remember. The day I left I made an assignment of a mortgage to Hunt & Eschleman, but I do not remember any money transaction, except what I have stated.

Q. Where was the assignment of that mortgage made?

A. At Benj. H. Williams' office.

Q. Do you know whether the person who took the acknowledgments of those papers wrote anything except his signature?

A. They appear in Oliver's handwriting. I did not see anything except his signature and the notary public's, and the title of his office. I should think the notary public was there a half an hour. He may have been there an hour.

Q. Did Oliver come to Buffalo in response to that telegram to which you have referred?

A. He did.

Q. What occurred here between you and him?

A. I said to Oliver when he came that the Haineses had talked about it, and wanted to know on what terms it could be bought, and I had on the strength of that telegraphed him to come; I had made no arrangement with them. They asked me if the property was for sale. Haines said he was glad I had got it; he knew with whom he was dealing; and if he made any arrangement it would be carried out.

Objected to.

I told Oliver that they wanted to buy the property, and I
3179 thought I would telegraph, and get him down and see what they would do, and see whether he had done anything with the other parties.

Q. Did Oliver and these parties get together?

A. Yes.

Q. Who were they?

A. Geo. Robinson came down. Haines came here first—I think Oliver came first—and Haines and the other parties met here. I think Haines had somebody with him as backer. They saw Oliver here. My recollection is that Oliver was at the Mansion House, and I saw him first, and I talked with him, and then I talked with them. He did not come in contact with them. He wanted I should negotiate with them and assume that I was the party in interest. I know from recollection that I would go and see Oliver and talk with him about it, and tell him what they suggested. I know they made some remark about my going to Oliver about it, but finally it got so that we all got together in my office—Oliver, Hawkins, Haines, Ranney, and Robinson, and Hunt, and Eschleman. They all finally got there. I think both Robinsons were there, but I am not sure. I think they were both there during the conference.

Q. Did you agree upon anything then and there?

A. Robinson, Haines, and Ranney agreed with me for the pur-

chase of the Devil river property. Oliver was present. We talked considerable before he came in. Hawkins was there most of the time during the conference at my office.

Q. In what capacity was Hawkins there?

3180 A. Hawkins was interested in getting his pay. He talked that all the time. He was interested in getting out of it and getting his money. As Oliver's brother-in-law, he did manifest an interest; perhaps more than he would for anybody else. Whenever Oliver was down Hawkins was called on, and was with him generally.

Q. Was the agreement for the purchase submitted to Oliver?

A. Oliver came in and talked to the parties face to face. He came in and the thing was all talked around there, and it was decided that they should go to Williams' office and make the payment.

Q. What do you mean by the thing was all decided at your office?

A. It was stipulated that Robinson, Haines, and Ranney should buy the Devil river property. They agreed upon what terms they should do it.

Q. Did Oliver go with you to Williams'?

A. Yes, sir.

Q. Did all the parties you have named go up there?

A. I think they were all present at different times, but not all at the same time. I think this was immediately after dinner.

Q. What did you do there?

A. Somebody made the statement in the presence of the parties interested—I think Oliver was there when the statement was made—stating to him what the parties had agreed to do. Mr. Williams sat down, and, after getting the idea of what was to be done, went to writing. I was there most of the time. I think I was not there all the time. Mr. Williams drew the agreement.

"Exhibit L."

3181 Q. At the time this paper was completed, was Oliver there?

A. I think he was not there when it was completed.

Q. Was any one left to represent him besides yourself?

A. I think Hawkins stayed there. How long he stayed I cannot tell. I think he stayed there all the time. Oliver started off to see parties about buying the property. He had an engagement to meet somebody. He said Hawkins could stay there; he would leave it to Hawkins to look after in his stead.

Q. The agreement was read over out loud to the parties?

A. I think it was read, page by page, as it was written, and then I think it was read as a whole. That is my recollection about it. I think Hawkins was there at the time the agreement was read. I think he was there all through. There was no objection made to it by any one.

Q. Will you state whether that agreement as written carries out the agreement that was made in your office?

A. I think it does. I so understood it at the time, and do now. I do not know [of] any change in it. After this agreement was

drawn and signed I think I saw Oliver within two or three weeks; he came down again about the time this term expired; it may have been five weeks.

Q. Do you recollect at whose suggestion the 30 days' time was put in there?

A. That was done at Oliver's suggestion. He wanted that put in. He asked to have it, and it was so understood and agreed, in
3182 order to give him time to sell to these parties that he had under way to buy. He was sure they were going to take it.

Q. When Oliver came back, about the time the 30 days expired, did he bring any one with him looking towards the purchase of it?

A. I think it was sooner than 3 weeks that he came down from Painted Post, that he brought those parties to buy.

Q. Did he come back alone?

A. The first time he came with those parties down there, and I think that was within ten days. The parties were Wheeler and Weston. He brought them here to see about buying the property. He got the parties together. I think he appointed a day for them to meet—all the parties interested. I think at that time C. Haines, E. and G. R. Haines, Evans, Hunt, Eschleman, and myself were there. Whether Robinson was there or not I cannot say. They were there at the Mansion House; they got together in some room there, and this business was talked over—what the claims were, and who the parties were that held the claims. Oliver got the different parties together in there, and talked with them—how they might pay, and how the matters stood, and what they were willing to do, and all that. So far as I heard, they all expressed themselves willing, if Wheeler and Weston took the property, to give them a reasonable time to pay. He told them what the claims amounted to, and in what shape they were. They hung off about it, and Oliver offered that they might have the property upon the same terms that the other parties would take it.

Q. You mean the same terms as in this agreement?

3183 A. Yes; my recollection is that Wheeler and Weston asked, why not let these parties have it. Wheeler said he had been there and did not feel favorably impressed. Oliver said he had some feeling against them; that he felt that the property was worth more, and he would rather some other parties would have it at the same price.

Q. Did they take it?

A. They did not.

Hunt and Eschleman were not present at the time this agreement was drawn and signed in Williams' office. I do not think they were there during any of the writing. They went on the two o'clock train that afternoon, very soon after dinner. When Oliver came back he asked to see this agreement; his request was granted. The note on the top the agreement is the note I gave to Williams, requesting him to let Oliver see the agreement—"Exhibit M."

I do not know that he asked for a copy. There was only one copy made and signed by the parties, to my recollection; that copy was left with Mr. Williams; it was left with him in trust; he kept it for all the

parties. There is no way that I can fix the date when the note "M" was given to Oliver. It was soon after the time he came back. About the time he was there with Wheeler and Weston.

Q. Do you know whether he went to Williams' and read the agreement?

3184 A. I know he told me he had been there and read it, and said he was satisfied with it; that was soon after I gave him the note. He never found any fault with it to me.

Q. Was that in Haines' presence?

A. Yes, sir; he said it in Hunt's presence.

Q. What else did he say, if anything, during that conversation about the sale that you had made?

A. He had been West at the time he talked this. I am not sure whether it was the same time he said that, but I know that he said it some time before the expiration of the thirty days; that he had his ideas about what he was going into. He was going to turn his attention to some Michigan speculations, and was going into it head and ears. He said he would not take that property now if he had as much money as he could carry; he would not take it and pay the liabilities against it. He had found some marble quarries in the northern part of the State that were very valuable, and he would make a big thing out of that. He said: "Now, this is all over that I am going to turn right into this other, and I would not take that property and pay the liabilities against it for it."

Q. Was this agreement ever consummated by you; did you ever make any deeds under it?

A. Some time after that I made a deed to Robinson, Haines & Ranney.

Q. At the time of this agreement in Williams' office do you recollect any agreement about a quit-claim by Oliver?

A. There was an agreement. It was talked that they wanted a quit-claim They wanted Oliver to join with me in a deed to them.

3185 Agreement offered in evidence, marked "Exhibit N."

Q. State whether you ever conveyed to Oliver any of the Preston lands in that claim, "Exhibit N."

A. I have.

Q. Ever made any memorandum or voucher to show what they were?

A. No, sir; I think I have a letter that shows what he asked me to do, and I think that those are the lands.

Letter produced and marked "Exhibit O."

Q. How many acres are there?

A. In the neighborhood of 1,000 acres; I have not looked it over to see.

Q. Has he ever asked you to convey him any other?

A. No, sir.

Q. Was this Buffalo agreement carried out by Robinson, Haines, and Ranney, as far as you know?

A. Yes, sir; I believe so. I have not looked them over lately, and I can't say just what it is.

Q. Will you state whether you received any consideration or benefit for making this deed to Robinson, Haines, and Ranney?

A. I never did.

Q. Did you receive any money or consideration for making that agreement, "L?"

A. No, sir; I never have from them or any one else.

Q. State whether or not there was any understanding between you and Robinson, Haines, and Ranney; any secret understand-
3186 ing or any other agreement other than is expressed in this paper that you have just put in evidence?

A. There was not. In drawing the deed I instructed Williams to draw it so as to satisfy the parties, and leave me entirely out of it. I told him I had no interest in it, I was making the transfer as he discovered as Oliver's agent, and I wanted that the paper or document, which I signed, should transfer just what I had received—just turn it over.

Q. Did you ever receive any benefit for making this agreement as Oliver's agent from Robinson, Haines, and Ranney?

A. I never did; not one cent, nor one farthing.

Q. Was there any understanding that you would be benefited by this agreement?

A. No, sir; I made the transfer to them for their benefit and for Oliver's benefit, and for the purpose of consummating the arrangement that they had agreed upon.

Q. When did Mr. Oliver first find fault with this Buffalo agreement, or with your action under it?

A. I have never heard of him finding any fault.

Q. When did you first know, or how, that he was dissatisfied with that agreement?

A. I first knew that the parties commenced a foreclosure, and that he had filed a cross-bill against the foreclosure. That was the first intimation I had that he was not satisfied with it.

Q. Will you state whether there has been any agreement between you and Robinson, Haines, and Ranney with reference to getting this property away from Oliver?

A. There was never any agreement.

3187 Q. Was there any collusion or conspiracy, or attempt to defraud Oliver?

A. Not at all; the very opposite was the fact. The object was to protect Oliver, and save his money and the property for him if I could, and I lent Oliver money to travel with, and look up purchasers.

Q. Did you ever go into possession of Oliver's property, under any of those transfers?

A. I never went into possession. Hawkins was there with me. The Preston lands had to be taken care of. You know, in talking with the Robinsons, of course, I had to assume I had bought the interest, and talk buncombe to them; I didn't charge myself to anything. I told them I could not tell, but I asked some questions about

the business, and made a memorandum of what they said and talked about the business, and when I came away I told Hawkins and Oliver that there must be something done about those lands, and told Hawkins to come in, and examine those lands. He talked about looking after my interest there; and I said to him, "You had better not interfere, or undertake to say anything about the business here; they were feeling cross over this matter, and they have said something about you, and I would not consider it advisable; they won't heed you; all you want to do is to go and look at these Preston lands, and come out and talk to me." That is the way I discussed the subject. Under the arrangement, I ostensibly was Oliver. Robinson talked with me about what I had proposed to do. He said he was all in the dark, and he wanted to know what he should do, what he
3188 should expect, and all that, and I had no answer to make; I left him and didn't talk to him. I didn't talk to him that I was going there at all, but I talked to him about Hawkins; asked him how Hawkins stood there. He did not think Hawkins was a lumberman, though he repudiated the idea of his having anything to do with it. I said to George, "You go into the woods and look at those lands; you can't do anything here; it is not necessary for you to be here; you look at those lands and come down as soon as you can. Oliver and I will go below, and you come down and we will see what is to be done; look up those lands and see what you think of them." Those were the Preston lands. I never authorized him or gave him any authority to go in there and take charge of the business, and what I said to Robinson I said for the purpose of carrying out the idea that I really was the purchaser. I was going to have something to do with it, so as to put them to their rest on that point. I told them I was going below; I made no stipulation with them; I had no idea of doing such a thing.

Q. Did you ever, yourself personally or by an agent, take any possession of any of these lands, except the Preston lands?

A. No, sir.

Q. Ever receive any timber?

A. No, sir; I received no timber. I didn't receive a dollar or a farthing.

Q. Will you look at this paper, "Exhibit F," attached to Mr. Oliver's testimony?

A. I don't know that I ever saw that paper; I might have
3189 seen it and I might not. I have no recollection of ever seeing it. I have looked over a copy of this, so that I know the purport of it. This particular paper I do not remember that I ever saw. I may have seen it and I may not.

Q. Do you recollect Oliver ever talking with you about this?

A. No, sir. Oliver talked some of these things; he talked about how much he owed; he talked in general terms about that, so that I heard him at different times talk about it, and all about what they had to pay. I think at different times he talked about that.

Q. Have you been up to Devil river since the firm of Cunningham, Robinson, Haines & Co. have been operating there?

A. No, sir.

Q. Have you been over the land where they have cut?

A. Yes, sir.

Q. How much have you been over the land?

A. Not very extensively, I should say; all that I had traveled over is 10 miles of land that has been cut.

Q. What proportion of the land that has been cut?

A. I have been in both winters, and saw generally where they had been at work, and where it was taken out; and perhaps in both winters I saw generally where they had been cutting timber; been on their principal roads.

Q. In what manner has the pine been cut off from there?

A. So far as I have been able to judge, it has been cut ju-
3190 diciously. It has been cut as any other parties would cut it, from the appearance of the lumber and the land.

Q. Have you seen any of the lumber that has has been cut there?

A. Yes; we have received all but one cargo.

Q. Does that lumber run as lumber generally does?

A. Yes, sir; we handle other lumber, and it has been no better on the average; it has not been as good as the average of lumber that we have received from there; we have not received much from Alpena; our lumber has not averaged as good as what lumber we have received from Saginaw.

Q. How are the proportion of lower grades in the lumber you have received?

A. Our lumber is inspected fully as low as any received from any other place.

Q. What does that show?

A. That shows that the lumber has been taken as it averages, and as it come from the lands; there has been no choice stock cut out; that would be an indication that it has not been a select lot of logs.

Q. Have you had any Norway come down?

A. We have had a good deal of Norway that is not worth much more in the market than hemlock, but wherever we have cut we have taken it clean.

Q. At the time the parties were together in Buffalo, prior to this Buffalo agreement, and about that time, do you know any arrangement by which Hunt & Eschleman deferred the payment of their mortgage with Oliver, Robinson, Haines & Ranney?

3191 A. I never have known of any stipulation for an extension of the time of the payment of that mortgage, and I do not think there ever has been.

Cross-examination by Mr. RUSSELL:

Q. Were you ever a practical lumberman before you became a member of the concern of Cunningham, Robinson, Haines & Co.?

A. I had been in the wood and timber business, in pine lumber, but one year.

Q. Where?

A. In Buffalo; Cunningham & Shaw.

Q. Had you ever in 1868, when you received the transfer of this

property from Oliver, examined this property; if so, where, and to what extent?

A. In the first place, I went there and examined 5,000 acres of the property; in '64, I think.

Q. Is that the property you subsequently sold to Oliver?

A. Yes, sir; the Sault canal lands.

Q. What did you pay for those lands?

Objected to.

A. Three or four winters I passed through the woods on the State road, and then I was there to see Hawkins; I was in the woods at the time Hawkins was there in '66, at their camp, and went through the woods with him; I went in the woods once to examine where Oliver had been cutting some timber in the winter previous.

Q. Have you ever had any experience in looking lands, and would you trust your own judgment in purchasing lands from a personal examination of them?

A. Now I would.

3192 I mean when you received this transfer of property from Oliver.

A. I had examined lands in the northern part of the State of Michigan. I had examined lands during the summer of 1867 considerably, and some in 1868. I think I had examined more or less pine lands and become better posted than at the time I went on the lands first

Q. Did you consider yourself in any sense an expert in the business of land-looking and the estimation of timber and stumpage?

A. At the time of the transfer from Oliver to me I had seen these other lands, which made me a better judge and gave me more confidence in my judgment with regard to lands. I still had these before me. I knew more of the comparative amount of timber on land. I had seen lands enough, as I considered, so that I knew when I saw a tract of land that suited me pretty well.

Q. Would you at that time have invested your own money in the purchase for yourself of such a tract of land as Oliver's upon your own judgment or upon any such examination as you had made of it?

A. Well, yes; I had not the strongest confidence in my own judgment, but I had seen other lands and I began to feel pretty well assured. Still, in looking lands I would like to have somebody with me to look where the lines were, and keep track of the lines and bearings so that I might look at timber. I never traveled without somebody with me. From such an investigation I should have been willing to have gone into the woods and bought any tract of land where I could get it at a reasonable figure.

3193 Q. How many acres of land did you receive a transfer of from Oliver?

A. I never read over the deed to know just how much there was of it. My recollection is that the transfer that he made was in the neighborhood of twelve thousand acres. It may have been thirteen

or fourteen thousand. I got that from other parties about that time who professed to know.

Q. Was it not twenty-one thousand acres?

A. No. I did not receive a title from Oliver of 21,000 acres. The way I got at it was from parties that were buying lands. My recollection is that in towns. 28 and 29 there were some 12,000 acres, and some lands scattered around, some 2,000 or 3,000 acres.

Q. Had you ever looked at an acre of pine land except the five or six thousand which you purchased from the Sault Canal Company and sold to Oliver?

A. I had never been there to examine the lands.

Q. How can you testify that the value of the pine lands were $50,000?

A. I judge from what parties have told me and what I have seen. I have taken particular pains to try and find out since then where the timber was. I supposed there was more timber on the lands than there is.

Q. What did you pay the Sault Canal Company per acre for the land you bought and sold Oliver?

Objected to.

A. I cannot tell what I did pay. I do not remember. I think those lands were bought in 1862 or '63.

Q. What did you sell them at per acre to Oliver?

A. I cannot tell how much.

3194 Q. Did you get $35,000 for five thousand acres, so that it would be $7 per acre?

A. I think there was more land than that—between six and seven thousand acres.

Q. Can you state whether the price was about $6 per acre?

A. I think it was between five and six dollars.

Q. Was not the balance of the land as valuable as that, or have you no knowledge upon the subject?

A. This land was very conveniently located. Its location was such that it made it very valuable, in connection with the property, to him. Oliver had taken off a great deal of timber. He had taken off about the mill a large tract—I should say from appearances about 1,000 acres.

Q. How can you tell, if you had no personal knowledge of the lands?

A. I had to cross his lands at different times to go back to the other lands.

Q. Have you any knowledge of the cost of the various improvements upon which you have placed the valuation?

A. Only as I have priced other mills, and in a general way; I am no millwright.

Q. Have you ever been engaged at all in the practical operations of a saw-mill or the practical operations of manufacturing lumber?

A. I never have.

Q. Do you know anything of the cost of docks to which you refer?

3195 A. I only know from my general observation. I learned from general observation that these slabs are taken out when they are sawed and put into a dock. You can make them in a dock as easy as you can take them away and burn them, as they were in the habit of doing. They have to be disposed of in some way. Still there is cribbing done. That is expensive.

Q. Do you know how much land Oliver owned in the counties of Alpena and Alcona, not included in your mortgage, or did you know at the time you received the transfer?

A. No, sir; I did not; I paid but little attention to it.

Q. Did you receive a deed of about six thousand acres of land outside of towns. 28 and 29 north.

A. I received a deed of Oliver of some lands outside. I don't think it was as much as that; I don't think it was near as much as that; I think it may have been three thousand acres; it may not have been; I don't know.

Q. What was the object of conveying to you those outside lands?

A. Oliver's object, as stated to me, was that he was involved; that there were large claims against him, and wanted to bring this about and close this thing up; that he must step right out; that he had been threatened, I think it was, of being thrown into bankruptcy, and he wanted to put it into shape.

Q. What were the large claims that he named, do you know?

A. I don't know at that time whether he specified to me anything in particular or not; he told me, I think, at Saginaw and Detroit.

3196 Q. Can you particularize a single large claim, or claim of any kind, that he named to you as being pressing and troubling him?

A. I don't know that I can. I don't remember now that he told me at that time what those outside matters were. He told me there were matters, that they were pressing him on, and they had been pressing him up.

Q. What object or interest had you in going from your home in Buffalo to Ossineke except that of creditor to Mr. Oliver by way of mortgage?

A. I was not a creditor of Mr. Oliver by way of mortgage. When I went there Oliver didn't owe me anything by way of mortgage. I went there, as I stated, because at that time I hadn't anything else to do in particular. He was very anxious something should be done, and I went down there just because he asked me to go.

Q. You went, then, in the character of a friend?

A. I did.

Q. Why, when you left Buffalo on the evening of the second, did you, during the day of the second, advise this creditor by way of mortgage, by making that assignment to Hunt and Eschleman without consideration?

Objected to.

A. Mr. Oliver knew that that was done. I told my counsel that I was going up there in Oliver's interest. Well, I will say this: I

told him I was going up there in Oliver's interest, and what I was going for, and I did it under his advice and instruction.

3197 Q. You consulted counsel with reference to receiving a transfer of Oliver's property before you left Buffalo?

A. Yes, sir.

Q. What counsel did you consult?

A. Mr. Williams.

Q. Any other counsel?

A. No, sir.

Q. Did he advise you to divest yourself of the character of a creditor by making this assignment?

A. I told him I was going to sell my mortgage, and he advised me to make the assignment.

Q. But you have already testified, in your former examination in Detroit, that you never received anything for that assignment; never received any obligation or any money up to that date; now the question is, did you deliberately get the advice of counsel, make that assignment for the sole purpose of endeavoring to strip this character of a creditor before receiving your transfer from Oliver?

A. I divested myself of all interest in that mortgage, and sold it unequivocally and unreservedly, and, as I testified before, I have received from the parties money.

Q. Did you testify in your former statement that you never had received any money or obligation up to the date of that statement?

A. I testified, I remember, and as the facts are, that I had received of them, but I had never had any settlement with them, and that on that settlement that this money was to be applied there, and I knew of no other place.

3198 Q. Weren't you advised by Mr. Williams that if you had the transfer of Mr. Oliver's property, being a creditor, the law would fasten a trust upon you—weren't you advised that as a matter of law?

Objected to as incompetent.

A. I can't say that he made use of any such language or conveyed that idea.

Q. Didn't he give you equivalent advice?

A. No, sir. I think I told him what I was going to do, and I told him I wanted him to draw up the assignment.

Q. Didn't you tell him that you were going to Ossineke for the purpose of receiving deeds and bill of sale from Oliver of all his property?

A. I told him I was going up there at Oliver's solicitation; that I was going up there for him to look at this property.

Q. Did not tell him you were going there for that purpose to receive a deed and transfer of all of Oliver's property?

A. I can't tell.

Q. What do you think?

A. I don't think I told him that. I told him I was going up there in Oliver's interest. I think I related to him his situation.

Q. Had you not received from the hands of Hawkins on or about 9th

of June a specific proposition in writing, which they have produced here and shown to you from Oliver, to put all his property into your hands for the purpose of managing the payment of the debts,
3199 a reconveyance, and had not that paper been shown, to your knowledge, to Hunt and the other mortgages here by Hawkins in the month of June previous?

A. It was not shown to any party, to my knowledge, and I have no knowledge that I ever received it myself. I know that Oliver made a thousand and one propositions. He was proposing at different times, and he had before that proposed to me to buy an interest, but I at all times scouted the idea. I never had an idea of taking an interest in the property. I told him I never would do it.

Q. Was not this proposition as contained in the writing of the 9th of June one of the thousand and one propositions which Oliver had made you before you ever went to Ossineke?

A. I don't know that he ever made any such in detail. My recollection is that all he ever proposed to me individually was to buy an interest of one-third or one-quarter at different times. He told me what they had on hand, what the lands were, and what they were doing.

Q. Will you look at the Buffalo agreement, if you please, on the first page, at the language, executed and delivered by said Oliver to said party of the first part on or about the 5th day of September, 1868, and explain how that recitation occurs in the Buffalo agreement, when, according to your statement, the conveyance was not made until the 8th?

A. Well, now, those papers were all left for record up there. My recollection is that when this paper was drawn, when the reference was made to the date of those papers, my recollection was
3200 then that Oliver dated them and I saw them, and that in describing the papers that was the date that I answered; that is my recollection.

Q. Will you look at the entry in your diary "Exhibit K," of the 5th of September, and explain the entry "stamps $3, recording $6.12"?

A. My recollection is about that, I kept an account of expenses, as you will see, before, and that after I got away, on my way down, I brought up my expenses and carried over here because there was no room there on that page, and I took it right across the page, brought over $16.50, and then added this other, although it was made after.

Q. Will you look upon the same exhibit, upon page 6, at the language, "Mr. R." says he owes debts amounting to about $10,000, besides about $5,000 Saginaw debts and lumber on hand, together with outstanding claims due the company, being about $2,000 worth of post; this includes $4,000 due Haines, etc.?

[A.] ——

Q. State with what purpose and object on Sunday, the 6th of September, you made that entry.

A. I went out with these parties that day after berries, and Robinson, I supposed he wanted me to go and talk with him; he knew

what I was there for, and wanted me to go and talk with him about taking an interest in it; and in talking with him I had to assume the appearance of being interested, and I did so, and made memoranda; he stated these things to me, and I made the memorandum of what he stated. I was in the habit of making memoranda. I think this was George Robinson—I know it was. I took it for what it was worth. He made the statement to me, and I put it
3201 down without any particular reference as to what it would amount to.

Q. Do you mean that you purposely conversed, and by your manner and conversation represented to Robinson what was not true with regard to your relation to the property?

A. I had to assume to them that this was not a farce, that I was taking the property. I made a memorandum of their statement. I had to assume that I was taking an interest in the matter with them, and so I was. I was there learning what I could about the matter.

Q. Do you believe, and did you then believe, that this statement of Robinson which you took down was true?

A. I believed Robinson was a man that was entitled to credit. I didn't know anything to the contrary. I didn't know anything about it.

Q. At the time you received the deed, bill of sale, transfer, mortgage, and other documents put in evidence did you, about 2 o'clock in the day, in the presence of one Reed, Ellsworth, Hawkins, Melville, Gallup, and of Oliver and his wife say that you took the transfers of that property for the purpose of running it and managing it and paying off all the debts as rapidly as possible, and that you put Hawkins in as your agent to run it during your absence?

A. No, sir; I never said anything of the kind, never thought of it; you know those letters don't show anything of the kind; he knows better than that to-day, knows what I did I did for friendship for him.

Q. You say before you started from Buffalo on the evening of the 2d you had no definite idea of what you were going to do
3202 when you got to Ossineke; how happened it that you took pains to consult your attorney with regard to the possible attitude you were to assume towards Oliver, and also took the pains to make this transfer of your interest in your mortgage?

A. Mr. Williams was my counsel; whenever I wanted to talk about anything I went to him. I didn't intend to do anything to put myself in a way to be brought to grief with Oliver's business, to damage my own interest, and injure myself financially or any other way. I didn't want to do anything that would get my foot in. I told Hawkins so; told him I would not do it, and when I went to Williams I went to him, so that whatever I did do, or assume to do, or suffered to be done, that I should not do anything that would in any way compromise my own affairs, that I was only doing and acting at his instigation.

Q. Did you go upon the steamer Huron about the 20th of August from Bay City to Alpena in company with Hawkins?

A. No, sir.

Q. Are you correct in your statement that Oliver departed from Buffalo before you from Ossineke?

A. Yes, sir.

Q. How long before you?

A. I think two or three days.

Q. With the expectation of being followed by you?

A. I think he expected that Hawkins and I would come up there.

Q. Had you agreed with him that Hawkins would come up?

A. I think so.

3203 Q. Was that agreement made with the knowledge of Hunt & Eschleman, do you know?

A. I don't know that it was; I believe Oliver and I talked the matter over, and I talked some with Hawkins about it, but I don't think that I knew Oliver made any arrangement with them, or that Hawkins made any arrangement.

Q. Don't you know that Hunt & Eschleman did know that you were about to start for Alpena on the 2d, and did they not know the object for which you started?

A. I think they knew that I was going up there, but I don't know how much they knew about what I might or might not do when I got there.

Q. When you delivered them the assignment and your one-third interest in that mortgage, did you not tell them that you did it preliminary to starting to Ossineke for the purpose of taking a transfer of Oliver's property?

A. I didn't tell them that.

Q. What did you tell them?

A. I think they understood from me I was going up there, and I think they knew something about it. How they knew it I can't tell. That I was going up the because Oliver wanted I should go. I think they knew all about it from the beginning to the end. They had visited from noon to midnight; Hunt's talking this thing down, and trying to see if there could not be some way fixed that Oliver might save something out of it, but still not jeopardize their own interest in any way. Anything they could do they would be glad to do to help him get through and not lose anything.

3204 Q. Didn't Hunt & Eschleman know as much about the condition of affairs, and the various propositions that had been made as you did?

A. I don't know; I was there with them sometimes; whether they knew as much or not, I don't know. I know that when they were there, there was a general talk about it, and they knew when I was there what I knew about it.

Q. When you delivered your assignment of the interest in the mortgage just before starting, did you not tell them you were about to start, and why you were going?

A. I don't think I did.

Q. Do you mean to say they were ignorant of the fact that you were going?

A. I don't know, but they knew I was going; I don't think I said anything of the kind to them.

Q. Do you not know that they did know it?

A. I think they knew.

Q. Didn't you tell them?

A. I don't think I told them; I have no recollection of telling them.

Q. When did you last see Hunt and Eschleman before starting for Ossineke?

A. I saw them in Buffalo at my house, at dinner; I don't know whether I saw them there or at Williams' office.

Q. Why did they go to Buffalo at that time?

A. I don't know.

Q. Did they not go by appointment with you preparatory to your going to Ossineke?

A. I don't remember any appointment.

Q. What day of the week was it you started for Ossineke?

3205 A. I started from here Wednesday night; it must have been seven o'clock.

Q. How long had Hunt and Eschleman been in Buffalo?

A. I don't know; they sometimes come here and stay two or three days; and sometimes they go in and out in the same day. Whether they came that day or not, I have no way of knowing.

Q. Didn't they come on that day, or the previous day upon the special business of having a conference with you prior to your departure for Ossineke, and for the special purpose of receiving the assignment of your interest and your mortgage before you went, and as a step preparatory to your going?

A. I have no means of knowing that as a fact; they may have been here two or three days. They may have only come that day; they may have been here a day or two before and gone home and I may have been out there; I can't tell you how it is; I have not now the most indefinite recollection about it.

Q. You recollect with great exactness with regard to dates?

A. I don't generally; I had a memorandum of those; I have a memorandum of many things.

Q. You testified that you never encouraged Oliver with regard to this idea of trust. It had been broached to you before you had gone up there but you didn't encourage it.

A. I had not entertained the idea. Oliver had talked in a different way about my taking hold there, and about taking it and

3206 working it up, but I never encouraged that idea, and I never talked to him that I would do it; I don't know whether encourage is the best word. It is this: I never entertained the proposition for a moment or led him to suppose that I did.

Q. But you mean to say that he had broached it, and urged it upon you, but you failed to encourage it?

A. I mean to say that he had talked about it, wanted something done; he seemed careworn.

Q. Had not he definitely broached the idea of trust to you, and had you not failed to encourage him?

A. Before this I don't know that he had definitely broached the idea of trust. I don't think it had ever come up in that shape before. He wanted me to buy in, and come in and help work it, and so forth. He talked of my buying an interest in it. I never encouraged that idea. I don't think he ever broached the idea of trust until he got into this narrow place, where there must be something done to release him from his situation.

Q. How was he in any more narrow place on the 3d or 8th of September, than he was on the 8th or 3d of August?

A. He said to me those parties would not wait. They were going to pitch in and break him up under the mortgage.

Q. What parties had told you, or remarked that they would foreclose?

A. Nobody had told me so. Oliver told me that that was the fact, that those parties who held mortgages—he laid a good deal of stress upon the Haineses—were impatient for their pay, and bound to have something done.

3207 Q. It takes a year in Michigan, as you know, and as Oliver knew, to foreclose a mortgage. What was the particular necessity; the commencement of a foreclosure would not make any difference.

A. As I said to you, these other matters were hanging—they had threatened him with bankruptcy. He knew that they would not wait. He had seen parties there that were interested, and he put them off from time to time, and he proposed to put them off as long as he could. They threatened to prosecute him, and he didn't know but they would prosecute him. He said that when he came up to Ossineke.

Q. On your way down you stopped at Bay City; state whether you did not go to Mr. McMath's office, or whether it was not proposed by Oliver that McMath make a deed, embodying the basis upon which you received the transfer of the property, and state whether if the sole object of the transfer was to enable you to make a sale, why you could have any objections to having that thing put in writing.

A. Mr. Oliver requested me to go to McMath's office, without telling me why he wanted me to go up there. We stayed all night, and left there the next day. He asked me to go up to McMath's office. I went up there with him, and he introduced me to McMath and his partner. McMath says to me: "Mr. Oliver says he has been making over his property to you, and he has nothing to show for it. Now, it is proper you should make some paper to him to show what the facts are." I told McMath I had told Oliver on what terms I would accept his property; that I would accept the papers he made out. I told him I had told
3208 Oliver decidedly I would not agree to do anything; that I would not agree to a thing, and I didn't propose to. When he talked to me about doing this I said, "Mr. Oliver, if you do this you must do it and trust my honor in this matter, because while you may do this, I won't take upon myself to do or perform any act at all." That is what I said to McMath. I told him that I

had never told Oliver that I would do it, and Oliver didn't expect that I would do it. He knew I would not do it when he was making the papers.

Q. But if, as you now testify, the only trust that you had was to make a quit-claim deed to anybody who should buy, what earthly objection could there be to putting that in writing?

A. I was not going to allow any strange counsel that I hadn't confidence in to make any writing that I should sign. What I was doing I was doing without any compensation, and I was not willing that any one should bind me to do anything where I was not getting anything.

Q. How could you be affected by signing a writing that would quit-claim to Oliver whenever he should name the party?

A. I didn't profess to be a lawyer. I am not an attorney. I didn't propose to put my foot in to do any act or thing that would in any way place me in a position that I might get into trouble.

Q. How could you put your foot in by agreeing to transfer the title that you had received?

A. I didn't know McMath.

Q. Why didn't you mention in your direct examination your visit to McMath's office?

A. I thought of it, but it was not called out, and I am
3209 glad of the opportunity, and I will tell you just the facts about it.

Q. When you went to Ossineke was the first thing you did to go to the section post and ascertain whether or not the mill location was included in the Cunningham, Hunt and Eschleman mortgage, and, if so, what was your object in doing that?

A. That was not the first thing. I don't know the day we went there. I think it was Saturday or Monday that we went there.

Q. What was your object in doing that?

A. I had the original mortgage, and supposed that it included everything there. I had heard that the question had been raised; that there was a question about it. I supposed it included the entire section 12, and I think Hawkins was the one that talked about that, and he and I went up together. I think he said some parties said that was so, and while we were there he and I went over to look.

Q. That is the only explanation you can give, is it?

A. Yes, sir. I should not have thought of it if it had not been for that. My attention was called to it by Hawkins, and he was there, and he and I went over. I think he was the only one I said anything about it to.

Q. What interest had he in learning whether the mill was secured to Cunningham, Hunt & Eschleman?

A. I don't know what particular interest he had, any further than they had considered that the Hunt and Eschleman mortgage was a prior lien, and it was in the way of these other claims, and the other
parties that held the mortgages held that the Hunt and
3210 Eschleman mortgage was a prior lien. They talked that generally with regard to the property.

Q. Was not that mortgage always in the way in every interview

and proposition; and was it not a primary object in every interview and proposition, and every conference held upon the subject to make provision for that mortgage in the first instance?

A. No, sir; no further than this, that nothing else could be paid first. It was a sort of impediment in the way of other parties, in keeping them from proceeding against the property to collect their claims. Oliver so regarded it; but so far as being provided for, and being paid first or second, I don't think there was anything of that kind talked; I don't remember that there was.

Q. Constantly in the arrangements between you and Oliver, did you not converse with respect to the provision to be made for the Cunningham, Hunt, and Eschleman mortgage; and did you not provide that that mortgage or the payment of that mortgage should be deferred, you to receive certain additional security in the conveyance of this (6,000) six thousand acres of the outside lands?

A. No, sir; there was never anything of that kind. I never undertook to defer the payment of the mortgage a day, to interfere with it; and I never knew that Hunt and Eschleman did.

Q. Were you not fully empowered while you were at Ossineke to make such proposition with regard to that mortgage as you saw fit?

A. I had no delegated authority and no instructions with regard to that mortgage.

Q. Had not the subject-matter of the payment of the in-
3211 terest and principal of that mortgage, and the provision with reference to it, been the subject of a conference between you and Hunt and Eschleman, before you left for Ossineke?

A. No; there was nothing of the kind.

Q. Do I understand you to say that it had not been conversed about between you and Hunt and Eschelman before you started for Ossineke, the time of the payment of that mortgage, with reference to your contemplated visit to Ossineke?

A. No, sir.

Q. How would the transfer of property to you assist Oliver in making the sale; how could you quit-claim any better than he could quit-claim directly to another person?

A. As I stated before, Oliver had been in negotiations with these parties, and he claimed that they were putting upon him more than they ought to, and they had followed this thing along up to to this time, and they would not let up any on him, and it had come to a point when he said that there had got to be something done. Now, my idea and his was, as he talked it, that if they found they had a new party to deal with, a party that would talk the thing strong, that it would look to them as if they had got to go slow with it; they would extend the time; that he could be talking of this and that and some new thing that had not been talked about; that this arrangement would gain time, and it did have that effect; negotiations were taken up immediately, soon after I got back; I met
them very promptly; I met Mr. Haines; I had never had
3212 any acquaintance with him, and I met him very promptly with regard to the property, and he acted as though he

thought there was a "rat in the meal," and he talked with me differently from what I supposed he had been talking with Oliver, from what he said.

Q. If you made no arrangement with regard to deferring Cunningham, Hunt & Eschleman's mortgage, explain how it happened that the payment of it was actually deferred, and proceedings to foreclose were only commenced comparatively recently?

A. There was never any threat on the part of Hunt and Eschleman to foreclose the mortgage on Oliver. On the contrary, they held it along. They told parties that he brought there. They told Wheeler and Weston that if they bought the property they could arrange it as an inducement to get them to buy. They talked clever to them. I think Hunt was the spokesman in talking that to them. He and Eschleman were both there. They said if they wanted the property, so far as their claim was concerned, they could be dealt with, if they could make a trade with Oliver to do so, and they would get along with that matter well enough, as far as their payment was concerned, if it was kept secured and in good shape.

Q. Was it not consequently, in every conference in which Hunt and Eschelman participated, agreed and proposed by them that they would accept the proposed vendees of the property as their debtor, and look to them for payment of the mortgage out of the proceeds of the property to be realized by such vendees?

A. I never knew them to advance any idea that they would
3213 change their security or let up, or make any different arrangement, or any new arrangement, except by payment of the mortgage.

Q. But did not they hold out as an inducement to those proposed purchasers all the time that they would delay payment, but would accept such purchasers as their debtors and receive pay from them?

A. I don't know that they did. They only manifested a disposition—they seemed to be wished to be understood as not crowding this matter to force Oliver in accordance with the proposition laid down from the commencement, to crowd him or force him to any other, or to force the collection of their mortgage, or to interfere with or to become any detriment to his financial interest.

Q. Why were they invited to be present at any conference of any importance which took place with regard to the subject of the sale of the property?

A. Those parties went out there. I don't know why they went out to see them. I could not tell whether they went to see on what terms they could deal with them with regard to their mortgage or not. I suppose they were invited here at different times—they had been by Oliver from the commencement, and whenever there had been anything they would be invited. They had been called to meet in conference. They had a large claim, and it was highly important that in any talk that they should have, the parties buying should know about what they could depend upon with regard to this mortgage, how soon they could pay it, and what arrangements they could make.

3214 Q. In these conferences, did Hunt generally represent the joint interest of himself and Eschleman and do the talking?

A. Hunt is a man that talks more with regard to business than Eschleman. Eschleman is rather quiet. I have heard them both talking with regard to the matter. I do not know that either was made the spokesman. I never saw any place where either did all the talking.

Q. Was there a good understanding with regard to the management of that security, as between yourself and Hunt, as father-in-law and son-in-law. I mean did you exchange views and confer upon the subject, and adopt one another's views with regard to it—with regard to the management of that $35,000 mortgage?

A. I don't know that we talked particularly with regard to that any further than while we were joint owners, and while Oliver was talking I was there. I think, generally, there was an acquiescence in whatever was said, and the positions we took with regard to the payment or the non-payment, and the time it could be paid. I do not remember that we ever differed.

Q. In the meeting at Hunt's house, at the Tonawanda meeting, and at the Lockport meeting, the Buffalo meeting, and at every meeting upon the subject, was it not tacitly understood by every person, by all the other mortgagees, by the proposed purchaser, that Hunt and Eschleman would receive any person who would purchase as their debtors and receive payment from them?

A. No, sir; I say now, so far as I know, that it was never by implication or otherwise understood that they, in no way, did anything to impair their lien and their security under their mortgage;

3215 and their talk always was that that was to be kept inviolate; that their security must be kept good; that was the point. They wanted their money. They were willing to do anything they could to accommodate themselves to the circumstances for any reasonable length of time that they did not loosen, or weaken, or discharge, or affect their legal original security; beyond that they would not do. They never talked anything else. They talked that strongly at different times.

Q. Can you explain how accepting the purchasers and actual operators of the property as their debtors would weaken or violate their security?

A. I do not know as it would, but I am talking now of the facts. I do not know that they would have done it, and I do not know that they would not have done it. There was never anything of that kind talked to my knowledge.

Q. In your telegram to Oliver did you express the object of the desired visit to Buffalo?

A. I cannot say. I telegraphed him to come here.

Q. If the object of the transfer was to enable you to sell, what need of telegraphing for Oliver?

A. Oliver was in negotiation; he had conferred with parties; he had not hit upon any plan; there was no understanding between him and me. He was going to sell to those parties that he saw; he didn't write as if he had sold. I had no instructions from him as

to what I should do, and I telegraphed him to be here and advise with him and get his terms.

Q. Were the parties to whom you wanted to sell, and with
3216 respect to the sale you telegraphed to Oliver, the same parties who were to buy under the Lockport agreement, except the E. & G. R. Haines?

A. I think so; I don't know whether he said so; I think Evans had talked with him; I know he had.

Q. Did Evans ever converse with Oliver personally with regard to the purchase?

A. I don't know that he did, and I don't know but he did; I understood that he went up there to see the property; whether Oliver was there at that time I don't know, but he was here at the same time during these negotiations for the sale; he was here with Haines, at what stage of the proceedings I am not able to say, but I know he was here, and I know that before he came here Evans kept talking about Haines taking hold of it; Evans had money to do it.

Q. During the 30 days which elapsed after the signature by you of the Buffalo agreement, did the proposed purchasers pay off or cancel any of the incumbrances?

A. I don't know that they paid off any; I don't remember now.

Q. How did you have any right to convey, as you did convey to them, until they had discharged the existing incumbrances according to the agreement?

A. I didn't understand the agreement to stipulate anything of the kind. I understood that at the expiration of 30 days, if Oliver failed to make any more advantageous sale, that we were bound to deed to them subject to the incumbrances.

Q. If these vendees under the Buffalo agreement were not
3217 to pay the Hunt & Eschleman mortgage, explain how it happened that, according to your answer and the answer of the other defendants in the case, they proceeded to expend the earnings of the property upon the property itself in permanent improvements.

A. Men improve property that is heavily mortgaged sometimes; I never supposed for a moment that the property was free from the mortgage besides being paid.

Q. But purchasers who don't expect to pay the first mortgage rarely expend money upon the property, do they?

A. You know as much about that as I do.

Q. What is your experience upon the subject; can you explain why, if they were not under obligations to pay that mortgage, they expended money on the property; can you give any rational theory? And I ask you for this explanation, because, shortly afterward you became one of the owners of the property yourself, and participated in spending money upon the property?

A. I never expected that that property was discharged from that mortgage; I never expected that the mortgage ever failed to become a lien upon the property.

Q. Didn't you expect to have to pay it, then, when you acquired your interest in the property, or to pay it with your partners?

A. I expected that in the usual way of collecting a mortgage, where the collection is enforced, that the property is sold upon the mortgage, and whoever has the property has it, and whoever has the property has to dispose of it in some way; the property might be mortgaged for what it was worth.

3218 Q. Did you expect, when you acquired your interest in the firm of Cunningham, Robinson, Haines & Co., that the property would be swept away, sold subject to this mortgage, and in the face of that expectation did you and your partners devote the earnings of the property to the permanent improvement of the property, and did you expect to provide for that mortgage?

A. It seems to me that I have answered that as definite as I can. I supposed that the mortgage was upon the property. I didn't know that any mortgage was prior to it. I supposed whoever took that property, if they ever had the property, if the property was worth it, it was good for the mortgage.

Q. How soon after you quit-claimed to Robinson, Haines & Company did you enter into negotiations for the acquisition of an interest in that partnership?

A. I don't think there was anything said about it until some time in December.

Q. Was it as early as the 9th of September?

A. No, sir; it was not.

Q. Was not the actual date of the execution of your deed the 13th day of November, and did you not date your quit-claim deed back to the 3d of October? And, if so, explain the object of that antedating.

A. I have no means of knowing. I can't remember about that. I supposed the deed to have been dated on the day on which it was executed. I know there was this about it that I talked with the parties as long as there was any chance. I talked with him, thought he might come round, and I said we have got to do something with them; put in our winter supplies; we can't let this matter

3219 lay any longer without knowing what we ought to depend on, but we will say to you that any time Oliver comes and does what he has assumed to do under the agreement, and takes the supplies off our hands—in a word, makes it as good to us as it would have been if he had fulfilled it at the time—we will pledge you our word and honor that it shall make no difference; that the purchasers may step right in and take the property just as if there had not been anything done. Whether that was run along a number of days past the time, how many days I can't say, but should think it was some days past the time on which it was to be executed; but they insisted on it being done, and I did it because they insisted upon it.

Q. When you were at Ossineke had you not ascertained from the Robinsons the amount of supplies that the Haineses had procured for the winter, and made arrangements with them with respect to the securement of those supplies?

A. No, sir; I made no arrangements with them, except general

talk about the situation, and about what was necessary to be done to carry on the winter's business.

Q. When you were there did you not converse with George J. Robinson in regard to the acquisition by yourself of an interest in the property, and make arrangements with him with reference to that end?

A. No, sir; no further than what interest I had assumed under the papers that Oliver made to me.

Q. When you were at Ossineke, did you not arrange with H. M. Robinson to meet him in Detroit with a view to making a further arrangement by which you should become interested in the matter?

3220 A. No, sir; I made no arrangement at all.

Q. Did you arrange to meet him in Detroit?

A. No, sir; I did not. I made no arrangement to meet either of the Robinsons.

Q. If you felt that you could not arrange the sale in the first place without telegraphing to Oliver, how did you feel you could execute the written contract without conveying it signed by Oliver, and why did you sign and deliver it in his absence?

A. The subject-matter of the contract had been talked over and submitted to Williams in the presence of Oliver, and Hawkins was left there to see what was done, and when we got there it was made, as I understood it and as Hawkins understood it, in full accordance with the talk that had been had, and the parties were there, and I was expected to sign it, and I didn't know why there was not a perfect propriety in my signing it.

Q. How were you informed that Hawkins possessed any agency from Oliver or had any authority to act?

A. As I said, he was with me during that summer, and it was considered if we talked with one Hawkins we talked with the other. Hawkins had an interest there. He was interested financially, and he went back and forth. He went with me to the register's office to see Oliver, and by common consent and usage during the summer it was understood that he was interested with Oliver for him and for himself.

Q. Didn't the same understanding prevail with regard to the relationship between you and Hunt and Eschleman which you say prevailed in your mind with regard to the relationship between Oliver and Hawkins?

3221 A. I don't know what others may have thought with regard to that.

Q. What stipulations by Robinson, Haines, and Ranney have been performed? Can you state anything they have ever done with regard to paying any of the debts of Oliver & Robinson, with regard to paying off any incumbrances? Are you able to lay your finger upon anything they have done?

A. I say first in general terms that I have never known him to call upon them to do anything they have not done. I have never known him to be inconvenienced or suffer from anything they have failed to do.

Q. Don't you know that James H. Hill sued his claim and recovered judgment and levied execution for $2,500, and H. M. Robinson sued and recovered judgment for $10,000, and they had totally failed to provide for these two claims?

A. With regard to the Hill matter, I don't know. I know something of what was done by report, but I don't know what the amount was. I don't know with regard to the H. M. Robinson claim by report.

Q. Do you not know that Oliver's land was sold under the Hill judgment, and part of your land was sold by mistake under it?

A. I don't know that any of Oliver's land was sold. I had some lands sold under a mortgage, and Baker, Thompson & Co. had some sold under the same.

Q. You testify upon your direct examination that you never went into possession. Did not Mr. Oliver make a formal delivery to you of all the personal property, lumber, teams, goods and
3222 store, and other property in the presence of witnesses, and did not you take formal possession of the real estate, and did you not say in the presence of Melville, Hawkins, Reed, Ellsworth, and a number of employees that you took possession under your deed, and that Hawkins would represent you during your absence?

A. How far that was carried I don't know; there was something said about it; I think he showed me some property at the time I was there; told me what there was of the property; the teams were in the woods, most of them, and I think he undertook to make some such delivery under that transfer that he made to me; my instructions to Hawkins were to stay there and look out the Preston lands; I have given you what I instructed him to do; I qualified my authority to him; I did not give him unlimited authority, and I did not propose to do anything to put myself in any shape—to put my foot in to be caught in the matter; in fact, what was done besides telling Hawkins to look out these Preston lands was not my act, but was the carrying out of what Oliver wanted there.

Q. Did you not profess publicly, in the presence of those employees that you have named, that you were going on to run the property?

A. I did not say any such thing; I left them probably with the impression—the same as I did Robinson; I left myself non-committal; I intended to do so; I only did so far as was suggested, and what was done was done in pursuance of Mr. Oliver's wishes.

Q. But you did convey that impression purposely, did you?
3223 A. I had not any design in it, I was only doing it to accommodate Oliver; I think that Oliver called these men in; I think he called somebody in, I cannot say who; he called them in, and there was some such thing talked; I think he said he called them in to see that he delivered everything over to me, and that Hawkins was going to stay there and look after the property; that is the way I think it was, and I submitted; I assure you I was very much inclined to avoid doing anything that would lead me into any complication, or in any shape that would make me become liable for any debts.

Q. Will you produce the original copartnership articles between

Cunningham, Robinson, Haines & Co., to show when you entered into partnership, and who were to take possession?

Objected to as not part of the cross-examination.

A. I have not that paper; if there is such a paper, I do not know where it is.

Q. Will you hunt it up and produce it, or a copy of it?

A. I can look for it; but I don't know where to look for it.

Q. Will you produce a copy of your books of account or annual balance-sheet, showing the receipts and expenditures of the firm of Cunningham, Robinson, Haines & Co., from the time it was formed, up to this date. (Objected to as incompetent and immaterial.) To show what liabilities you have paid, and show what parties are interested in the management of the property, and the proceeds realized?

3224 Mr. DUFFIELD. I advise Mr. Cunningham to decline doing that until you get the decree.

WITNESS: Those books appertain exclusively to the business of Cunningham, Haines & Co., and we, as a company, are carrying on a general lumber business—buying and selling generally, and we consider them our private property, and I do not propose to bring them here or take them anywhere else, unless I am compelled to.

Q. Will you state, in general terms, whether any of the earnings of the property while run, since you became a member of that firm, have been applied to any of the incumbrances existing on the property when the Buffalo agreement was formed, or to the payment of any liabilities of Oliver & Robinson?

A. There has been a large amount of earnings expended in the improvement of the property.

Q. (Question repeated).

A. I think they have.

Q. Can you name any?

A. I don't know that I can now; I think a good many of them have.

Q. Are you able to lay your finger upon a single one?

A. I don't think of any one in particular to mention now.

Q. Why was Mr. Williams, with whom the Buffalo agreement was left, instructed not to permit Oliver to look at it, and why was that agreement kept secret, and why was Oliver not permitted to look at it, except upon a written order from you?

3225 Objected to as assuming something that has not yet been proved.

A. I will say that there was but one copy made at the request of Robinson, Haines & Ranney; that was left there in Williams' charge, and they requested also that it should not be seen. It was at their request and not at mine, except by an order from the parties.

Q. What was the object of keeping the thing dark?

A. I don't know. I don't know but their request was that it

should not be taken away. It was understood that it should be left there.

Q. Was it kept in such a way that Oliver could not obtain access to it without a written order from you?

A. I do not know how that was. I gave Oliver a line to Williams.

Q. How did you happen to do that?

A. I don't remember whether he had been there or was going up to my office.

Q. Do you swear he did not give you a storming because he was not permitted to read the agreement, and then you gave him a note allowing him to read it. Do you swear that he did not upbraid you with not having performed the trust and having signed that agreement, which was contrary to the conversation?

A. I swear to all that, that I have no recollection of anything of that kind. On the contrary, I will swear that he was satisfied with it. He said it in my presence, and in the presence of Hunt.

Q. How did the subject of whether he was satisfied or not, arise?

3226 A. I do not know. I cannot tell you the conversation with regard to it.

Q. How happened it that the Hawkins' mortgage, and the E. & G. R. Haines' mortgage, and the C. Haines & Co's mortgage, were assigned to Hunt and Eschleman, about the time of the execution of this Buffalo agreement?

A. I do not know that they were about the time. I don't remember when they were assigned.

Q. Do you know the fact that they were assigned?

A. By report.

Q. Only by report?

A. Only by report, I think. I may have seen the assignments, but I don't remember now that I have seen all the assignments.

Q. Do you know the fact that they were assigned—not being actually purchased—that is, that the assignment was a mere form, the same as your assignment of your interest, and that nothing was actually paid to Hawkins or to the Haineses, upon those assignments?

A. No. I do not know that fact. I know there was some stipulation in the Buffalo agreement about some mortgages being assigned, but how I cannot tell.

Q. Did you not procure those three assignments to be made by those parties to Hunt and Eschleman for the purpose of having them under their control, and in such hands that you could manage them yourself?

A. Hunt and Eschleman did their own business with regard to those papers, and I did not procure the transfer.

Q. Did you not tell Oliver that you wanted those mortgages
3227 in hands where you could control them, so that if there was any failure in the operation you could manage the matter to suit yourself, or words to that effect?

A. I never told him anything of the kind.

Q. Are not those three incumbrances assigned to Hunt and Eschleman to-day outstanding incumbrances on that property?

A. They show for themselves what property they are on. I suppose them to be just what they purport to be.

Q. Don't you know the fact that they are still outstanding upon the property, and that they are subsisting liens upon the property, and that they are held now by Hunt and Eschleman?

A. I expect they are just what they appear to be.

Q. Do you not know that they appear to be outstanding incumbrances unpaid?

A. On some of the property I think they do.

Q. Can you give any reason why those securities were all accumulated in the hands of Hunt and Eschleman?

A. I don't remember what the Buffalo agreement provides. I think that has something to do with it. I think it was in accordance with the Buffalo agreement.

Q. You are now a member of a firm actively operating that property at the present time; and do you not know what incumbrances there are on it, and which have to be provided for by somebody?

A. I suppose I may know. I suppose I may inform myself.

Q. Do you know?

A. I know in general terms what the company has to provide for.

3228 Q. Do you not expect that the company has provided for these three incumbrances?

A. If they are upon the property it is a legal conclusion. I might be mistaken. I might consider a mortgage a good one and not be good for anything.

Q. Is not your belief that they are still outstanding?

A. People are likely to be deceived if they are not thoroughly posted in legal matters. I suppose them to be just what they represent.

Q. Have you made any offer to pay off those incumbrances which were upon that property at the time the Buffalo agreement was made?

A. I don't think that I have.

Q. Can you testify as to your knowledge and belief of with respect to whether Hunt and Eschleman paid Hawkins or the Haineses for the assignment of their incumbrances?

Objected to as incompetent.

A. They are the parties to know whether they have paid or not.

Q. What is your knowledge and belief on the subject?

A. I don't know that I have any direct knowledge with regard to it.

Q. Are all the mortgages and obligations held against Oliver and Hawkins by the several parties in the firm of Cunningham, Robinson, Haines & Co. in the hands of Hunt and Eschleman to-day unsatisfied?

A. I don't know whether they have them all or not.

3229 Q. Is it within your knowledge that any of the earnings of Cunningham, Robinson, Haines & Co. have been put to the cancellation of any of these mortgages or obligations mentioned in the last question?

A. No, sir; it is not.

Q. What did you understand to be the conditions upon which you, as Oliver's trustee, were empowered to sell to these parties, Robinson, Haines & Co.?

A. My recollection is, as I understood, when the transfer was made I must have Oliver's consent and acquiescence in what I had done or intended to do. I never moved in any direction counter to any of his wishes.

Q. Did he ever, by any signature or any writing, assent to that Buffalo agreement?

A. I suppose he did.

Q. In what signature or what writing?

A. I suppose in the writing that has been produced here. I suppose that was intended as an assent, together with the quit-claim deed, that he acquiesced and bound himself with regard to this contract.

Q. Does not his quit-claim deed cover property entirely different from the property covered by your quit-claim deed?

A. I understood it to cover all the same property.

Q. Was not Oliver's quit-claim deed actually executed before your quit-claim deed was?

A. It may have been; I do not know.

Q. Was not his made on the 12th of November and yours on the 13th?

A. I don't know. I have reason to suppose it was made on the day it was dated.

3230 Q. Was not his quit-claim deed made in accordance with the agreement "Exhibit M," made separately from the Buffalo agreement? Was it not made to carry out "Exhibit M," and not to carry out the Buffalo agreement?

A. My recollection is that the parties purchasing wanted Oliver to join with me in the deed, and that this was made instead of that, and to convey the same thing. They instructed the party making the paper that this was what they wanted.

Q. If the object was to have Oliver carry out the Buffalo agreement, why did he not acquiesce with you in your quit-claim deed? Why was not the transaction wound up by a joint quit-claim from you and Oliver?

A. I can't tell you why it was not done. I know that was suggested and talked, and they asked in the course of the talk something about the deed; that it be made so. I don't know but the other agreement had been written.

Q. Did you or Robinson, Haines, and Ranney, to your knowledge, ever make a demand upon Oliver that he should unite in that quit-claim deed with you?

A. I think when that quit-claim deed was drawn Oliver was not here.

Q. Was he not in Buffalo at that time?

A. My impression is that he was not here at the time that deed was drawn. I am not positive about that. It was talked, and Williams was instructed by whoever of the parties were here to make it in that way, to cover the whole thing. They wanted his acquiescence in writing.

3231 Q. Then why was not the "Exhibit N" a superfluity? What need was there of that agreement?

A. I do not know.

Q. Will you look at this Buffalo agreement, the third sheet which contains the stamp, and state how that happened to be in different handwriting from what goes before and comes after?

A. That is the same handwriting. The other is all the way through after that.

Q. I ask you if whatever is contained in that sheet on which the stamps are is not new matter, which never was talked over in Oliver's presence, and is not an interpolation?

A. I think there is nothing in this but what was talked over in Oliver's presence, and it was in my presence and Hawkins' presence, and this was all read as a whole.

Q. Do you swear that the matter of that sheet that the stamps are on was ever talked over or read or discussed in the presence of Oliver before it was put into that agreement?

A. Yes, sir.

Q. Can you state anything about how it happens to be put in in different handwriting?

A. I know that Mr. Williams often does write and his clerk copies, so as to make it clean work, and it appears there that they used a part of both handwritings.

Q. In putting in your answer why did you omit answering the allegation in the bill to the effect that you were at the time

3232 of receiving your transfer from Oliver, and still are the owner of one-third interest in the Cunningham, Hunt & Eschleman mortgage?

A. Mr. Duffield drew these papers, and I suppose he put in what he thought was necessary.

Redirect:

Q. How long had your firm been operating at Devil river before Oliver attempted to repudiate this Buffalo agreement and claimed it was a fraud on him?

A. I think it was about six months.

Q. Did the property up there demand investments in the way of improvements in order to make it profitable to work when you first went there?

A. Yes, sir.

Q. Over and above the expenses of those improvements was there any margin of profits, and, if so, how much that you could have applied to the reduction of any of these incumbrances before Oliver repudiated this agreement?

A. No, sir; before there was any repudiation there was a large amount of money expended in improving the property.

Q. Is not that the reason that none of these claims have been paid because of his attempt to repudiate this arrangement? Did you feel safe after he had repudiated this agreement in paying up these incumbrances until it was settled whether he should abide the agreement or not?

A. We have never felt that it was safe for us to undertake to go on and carry out and do anything, of course, that had been fully and completely repudiated.

3233 Q. Is not that the reason you have not paid the incumbrances?

A. We never should be likely to follow up a man and take care of him when he became hostile to us. Even if we had been able to and been disposed to under other circumstances we should not feel like doing anything until it was settled in some way.

Q. Have the firm of Cunningham, Robinson, Haines & Co. made any profits over and above their expenditures which they could apply on these incumbrances?

A. No, sir; they have not. They managed it as carefully as they could under the circumstances.

Q. With reference to the question that Mr. Russell asked you, about why you went to look at the section posts to see where the mill was—did not the E. & G. R. Haines mortgage cover the mill in question?

A. I think it did; I think there is no question about that.

Q. And was not the Hawkins mortgage on Erie and Niagara county lands?

A. Yes, sir.

Q. Hawkins had an interest in the Erie county mortgage; it was his mortgage?

A. He gave the mortgage.

Q. It was some interest to him to know what collateral security there was?

A. Yes, sir.

Q. As to these suits by Hill and Baker—do you know whether they were commenced before or after Oliver had repudiated the Buffalo agreement?

3234 A. I only know from report, but my recollection is that they were commenced after the repudiation.

Q. Can you tell us where you were on the 20th of August, 1868, and for two or three days afterward—the time Mr. Russell asks you if you did not go up on the steamer Huron?

Referring to diary from which "Exhibit K" was taken.

A. On the 20th of August I was in Detroit; I think when I went up I stopped at the Cass House. On the night of the 20th I started for Lansing; I stopped at Jackson, I think, and stayed over night, and the next day I was in Lansing. That was on the 21st. That night that I left there I came back to Jackson, and I stopped at the Michigan Exchange, in Detroit, and registered there on the 23d,

and from there I know that I came home; I know I was at home on the 23d.

Recross:

Q. Was not the personal property which you received, which was on the real property at Ossineke, sufficient to pay for all the improvements which you put upon it four times over?

A. I never knew much of the value of the personal property there. I only know what was received here and what there is there; I know that in general terms. I know what property has come here —what has been reported to us—what we have received. I could not state how much was there at that time.

Q. It was not all converted into cash right off?

3235 A. No, sir; it was not. It was run right along in the business, and everything has been kept in the business there right along, so far as I know.

Q. Look at that paper and state whether it is the assignment of your interest in the Hunt & Eschleman mortgage to them.

A. Yes, sir.

Marked "Exhibit P."

(Signed) HENRY S. CUNNINGHAM.

Subscribed and sworn to before me, this 30th day of August, A. D. 1871.

JAMES SHELDON,
United States Commissioner.

GARRETT B. HUNT:

I am acquainted with Mr. Oliver; have known him six or eight years. I am one of the defendants in this cross-bill. I live in Erie county. I am 52 years of age. I once owned part of the Devil river property, and sold it to Oliver.

Q. State how much money, if any, you received on this sale at the time the papers were transferred.

A. I received none.

Q. How long ago was that?

A. I cannot tell; between four and six years.

Q. When were you last on the land?

3236 A. I think it was the fall before Oliver bought it. I have not been there since. I have not been at Ossineke or Alpena since then.

Q. Have you had anything to do with that property or had possession of any part of that property since the sale to Oliver?

A. No, sir.

Q. Ever received anything from lumber or timber?

A. No, sir; not a cent.

Q. Did you see Oliver in the summer of '68, and, if so, where?

A. Yes, sir; I saw him frequently at my place, and met him here.

Q. Did you and he have any conversation there during that summer about your mortgage?

A. He was trying to sell.

Q. Was the mortgage due *or* on any part of it?

A. Yes, sir; there was interest due then, and payments, but I am not certain; perhaps nothing more than interest due on it.

Q. Tell us the purport of your conversation in the summer of '68.

A. I remember the conference was to have me induce Cunningham to take a quarter interest or third. He thought Cunningham could make money out of it.

Q. Do you know of any arrangement that was made between him and Cunningham at all that summer, to your knowledge?

A. No; I do not know, of my own knowledge, that there was any arrangement made.

3237 Q. Were you present at any conversation between Cunningham and Oliver during the summer?

A. Yes, sir.

Q. Was anything said about Cunningham taking a quarter or third interest, in those conversations?

A. Yes, sir.

Q. What did Cunningham say about it?

A. He declined to do it; he could not see any money in it; could not see where he could better himself.

Q. Where did Oliver stay most of the time when he was down here?

A. He was at my house a good deal; he would be there three or four days at a time. He was at Buffalo considerably, at the Mansion House. I carried him a few times from my place down to Hawkins', his brother-in-law.

Q. During this summer, state whether anything was said about Cunningham's taking that property on trust.

Objected to as leading.

A. I knew that he talked of it before Cunningham went up there, for the purpose of having it held so that he could sell it and not be robbed by Robinson and Haines. He styled them highway robbers.

Q. Was there any proposition talked by Oliver with Cunningham or you other than this sale?

A. No, sir.

Q. Did you hear any with Cunningham?

A. No, sir.

Q. What was the reason that Oliver gave, if any, for their transfer to Cunningham, so that he could make the sale?

3238 A. It was in order to benefit him—to pay his debts. He claimed that he wanted to pay them; the way they were managing him they would ruin him anyway. Robinson was the one he referred to.

Q. have you read the statement in Oliver's bill as to what the Cunningham trust was?

A. No, sir.

Q. (Looking at page 14 of the bill)——

Counsel for complainant excepts to that mode of examining the

witness by showing him the statement of trust in the bill, as it amounts to a leading question. It amounts to asking him whether or not the trust was as stated in the bill, and consequently leads him.

Q. Did you ever hear in these conversations anything similar to this?

Objected to as leading.

A. No, sir.

Q. What were the only propositions or programmes that you heard Mr. Oliver propose to Cunningham or Oliver and Cunningham talk about before Cunningham went up to Ossineke?

Q. Oliver had, as usual, a great deal of talk about his proposition, and I cannot say all that was said about it.

Q. Tell all that you recollect.

A. One proposition was he wanted Cunningham to take hold of it, that he could sell it.

Q. What was another, if any?

A. I do not remember.

Q. Was that the only one you heard discussed?

A. That was the only one; that was the point that I now recollect that he argued.

3239 Q. Do you recollect that Cunningham went to Ossineke?

A. Yes, sir; I recollect that he said he was going.

Q. About what time was that; do you know the exact time?

A. No, sir; I do not know the exact time.

Q. Do you know the day he went away?

A. Yes, sir; I was here the day he went away.

Q. Did you have any business with Cunningham that day?

A. Yes, sir; and Mr. Eschleman took an assignment of his interest in the mortgage from Oliver—his third interest.

Q. Are you sure that was done on the day he left?

A. He said he was going that night.

Q. Will you look at that assignment ("Exhibit P")? Is that the paper?

A. Yes, sir.

Q. Can you state whether that paper was made on the day on which it is dated?

A. Yes, sir.

Q. Where was it made?

A. In Williams' office, in this city.

Q. Who was present?

A. Cunningham, and, I think, his clerk, Barton, and Eschleman and Williams.

Q. Have you any means by which you fix this being made on the second of September?

A. No, sir; no more than the date in the assignment. The

3240 assignment was read over to me by Williams. I do not think I recollected anything about the date at the time of the reading.

Q. State whether Cunningham had or had not any authority from

you to represent your interest in the mortgage at Ossineke in any way?

A. No, sir; he had not.

Q. Did you know for what he was going to Ossineke?

A. I did not know; only Oliver wished him to go, for he talked to me, and wished me to induce Cunningham to go, so that he could hold the land until he could get a chance to sell it; he wanted more time than he was likely to get.

Q. How long before Cunningham went away was your last conversation with Oliver about this?

A. I should think it was two or three days; it might have been four days.

Q. What, if any, arrangement was there made between you and Oliver about your mortgage and its payment?

A. There was never anything made with reference to it, only he agreed to pay it before at different times—pay the interest before this—but after this there was no arrangement made, and at that time there was none.

Q. Did you have any understanding with him in reference to this mortgage in connection with Cunningham going to Ossineke?

A. No, sir.

Q. Have you ever had any arrangement different from the terms of the mortgage with Oliver, or with any one representing him?

3241 A. No, sir.

Q. Was there ever any conversation between you and Oliver; and, if so, what was it, about the deferring of your mortgage until Oliver's other debts were paid?

A. There never was any conversation of the kind.

Q. Did you ever hear from Cunningham or Oliver that any such agreement had been made by Cunningham and Oliver?

A. Not a bit.

Q. How long was Cunningham gone?

A. I cannot say; I should think he was gone eight or ten days; it may have been two weeks; I should think it was two weeks that Oliver was gone before he came back again; it might have been more than that; I saw him when he came back to Buffalo.

Q. Was anything said about what had been done between him and Cunningham at Ossineke?

A. I do not recollect as there was.

Q. Did you hear of any sale or transfer up there between him and Cunningham?

A. Yes, sir.

Q. Do you recollect who told you?

A. I do not; whether they were both together or not I cannot tell.

Q. Did Oliver tell you anything about it; did he talk at all about what he and Cunningham had done up there?

A. All the talk I recollect of was he had been trying to sell it, and he came down and went to Flint to negotiate a sale; after Cunning-

ham left he told me this, that he calculated to meet some
3242 men there, and, if I recollect right, Cunningham had tried to sell it to Haines & Co.; he telegraphed to him about that time.

Q. What did Oliver say to you about the parties at Flint?

A. He claimed that a little time would fetch it. That was his idea in all these transactions. When he heard me talk about paying me the mortgage he had just got, and the men just got hold of them, and he was going to sell out, he kept me off at a distance.

Q. State whether he said anything to you about Cunningham holding that property in trust to manage it, as stated in the bill.

Objected to as leading.

A. I heard him say that Cunningham had it for the purpose of holding it until he could sell it.

Q. Did he say that after Cunningham had been there?

A. I think so.

Q. Was there any negotiation that you heard of between Oliver, Cunningham, Haines, Ranney, and Robinson?

A. I was requested by Hawkins—and whether through Oliver's request or not I cannot say; I rather think that was so—to come out here from my home. I was at Cunningham's office in the afternoon and they talked this matter over with this company about the sale. Hawkins, Oliver, Cunningham, Haines, and I think Ranney, were there.

Q. Did you hear the negotiations in the office?

A. I heard them talk about it.

Q. Did you take any part in it?

A. No, sir; I had nothing to do with it.

3243 Q. What was the understanding as you heard them talk it?

A. Cunningham had got a sort of proposition from these men, Haines and Ranney—the company. I cannot say what the proposition was.

Q. Did Oliver discuss these matters at all; did he talk any?

A. Yes, sir. The most of his talk was done through Cunningham and Hawkins; I did not hear much that he said; he was in the room part of the time, and I recollect their going to the Mansion House to see him about some particular point; I think Hawkins wanted to see him or Cunningham.

Q. Was anything said as to Hawkins' authority to act for Oliver by Mr. Oliver?

A. After they had come to the point, as I supposed, they went to Williams' office; I was there a few moments; I think they began to make the writing, and I went home.

Q. Was Oliver at Cunningham's office as soon as the rest of you?

A. I cannot say that.

Q. Do you know whether he was at Williams' office at all?

A. I do not recollect; about the time they commenced to reduce the contract to writing, I went home.

Q. In these conversations, this negotiation, was anything said to

you or asked of you with reference to what you would do with the purchase-money of the mortgage?

A. No, sir.

Q. Did you make any agreement about it?

3244 A. Never. I never was asked to make an agreement, either.

Q. After you went away and the affair was over, did you ever have any conversation with Oliver about the agreement?

A. Yes, sir.

Q. When was it, as near as you can state?

A. It was sometime after he had left Hawkins to finish up, as he said; we were here in Buffalo. Cunningham was present, sometime after that; it might have been two weeks and it might not have been more than a week; it was after he came back and examined the writings that were made—looked them over.

Q. How do you know it was after he had examined them?

A. Because he said he had read them.

Q. Where was the conversation?

A. It was here in Buffalo.

Q. Do you recollect when?

A. It seems to me as though we met him on the street in Buffalo; there was nobody else present besides myself, Oliver, and Cunningham; he referred to the writings and he spoke in laudation of Hawkins and Cunningham; that the writings were made so that he was as well satisfied as though he had finished them himself; he went on to speak about the value of the property that was sold; he said if he had as much money as he could carry he would not give $100,000 for the property.

Q. In that conversation, or at any other time, did you hear any complaint from him as to this agreement—that it was not right?

3245 Objected to as leading.

A. I never did; I heard him speak in favor of it after that again; he went home with me one time and talked about it; that was at my house, or between there and the depot; I recollect it was between my place and the depot; we were on foot, going down to my house.

Q. What did he say?

A. He repeated the same with regard to what he would give, and then urged me to close up this mortgage; he wanted we should let him have the money to operate in land; he was going to move to Lansing.

Q. How did he come to do that?

A. Because they deserved it; the Robinsons had mines, and C. Haines had got more in his mortgage than he ought to have.

Q. Did you ever have any conversation with Robinson, Haines & Ranney, or any understanding with them about the purchase-money mortgage, either before or after they bought?

A. No, sir.

Q. Is there now existing any understanding?

A. No, sir.

Q. Were you asked in any way to join in the Buffalo agreement by any person, or to make any stipulation in it?

A. No, sir.

Q. Do you know whether Eschleman was?

A. I do not.

Q. Was Eschleman present during the whole of these negotiations?

3246 A. I think that Eschleman was here that afternoon. I am not certain about it.

Q. Did either you or Eschleman have more especial authority more than the other in reference to making any arrangement with the mortgage?

A. I did most of the business of it.

Q. Was that in pursuance of any understanding?

[A.] I do not think that it was any understanding. I did Eschleman's business a good deal—did up there. I have done it more or less for a number of years.

Q. You have seen the Buffalo agreement, haven't you; have you ever read it?

A. No, sir; I have never nead it. I never heard it read, that I know of.

Q. You do not think that you staid until it was completed?

A. No, sir; I am sure I did not.

Q. Did you ever know of any arrangement of Robinson, Haines & Ranney by which they were to pay this mortgage?

A. No, sir.

Q. Anybody ever tell you any such thing?

A. No, sir.

Q. State whether, after this Buffalo agreement, Oliver claimed to stand in any different relation with reference to this mortgage than he did before; and, if so, what.

Objected to as leading.

A. All the different positions he claimed to be in was that he wished me to foreclose it and drive them up and offer the land. That was all there was of it.

3247 Q. Who is responsible to you now for that debt?

Objected to as a question of law and not of fact.

Q. Outside the property to whom do you look for that money due on that mortgage?

A. I suppose, from the writings, I should look to Oliver.

Q. Have you anything else, either written or verbal, making any one else responsible?

A. No, sir.

Q. Has Oliver ever claimed that any one else is responsible?

Objected to.

A. He never has, to me.

Q. Do you know Calvin Haines?

A. Yes, sir.

Q. Do you know his signature?
A. I think I do.
Q. Will you look at that mortgage—state what that is?
A. It is a mortgage from Hawkins to Haines & Co.
Q. Is that Haines' signature on the back?
A. Yes, sir.

Marked "Q."

Q. State whether any money was paid you by Robinson, Haines & Ranney—and, if so, how much—for Oliver's account under the Buffalo agreement.
A. I think there was $4,000.
Q. Do you recollect when that was paid?
A. It was in the summer of '69, I think.
3248 Q. What did you do on receiving that money with reference to notifying Oliver?
A. I notified Oliver, and asked where he wished to have it applied.
Q. How was he notified?
A. By a letter.
Q. Did you ever receive any answer?
A. I never did.
Q. Have you ever made any agreement with any one that would interfere with the foreclosure of this purchase-money mortgage, either in writing or verbal?

Objected to as leading.

A. I never have, that I know of.
Q. About the time of the Buffalo agreement, did Oliver have any other gentlemen here besides the parties we have named?
A. After the Buffalo agreement, I understood it, this company gave him some 30 days to see if he could not find somebody to sell it to. That would better himself, or be as well for him. He told me he had in view Weston, and also Wheeler had been there and saw the premises. So he went down after that and got them up here to Buffalo. They came up after that, and then he wanted I should go out. The day they came he wanted to sell it to them, and I was in Buffalo on the day they came. They were at the Mansion House, in Buffalo. He wanted I should assist him, do what I could. I talked with them about buying the premises, and urged them to do it, and told him that the mortgage I represented they
3249 could have time on it if they bought the property of Oliver. In the course of the conversation, after they had got Oliver's proposition, he made them the same propositions, as I understood it, that this company was going to give them, and they asked him why he did not let the company have it, and it was the same answer, that they had misused him, and he did not want to let them have it.
Q. Do you know how long this was after the Buffalo agreement?
A. I cannot say. It might have been two or three weeks. It might have been longer. I think it was within the 30 days.

Q. Did you mention any particular time that they might have on your mortgage?

A. I said to them, if they would buy the place that they might have time on my mortgage. I did not name any time; they did not ask for any time. Then Wheeler said he had been looking it over partly, and from what he saw of it he would not give it for the property.

Q. Was Oliver present?

A. Yes, sir; and I heard this statement from Wheeler. From the view Wheeler had, he did not think that the property was worth it.

Q. Do you know of a mortgage from Oliver to G. R. Haines?

A. Yes, sir.

Q. Was that ever assigned to you?

A. Yes, sir.

Q. How did it come to be assigned?

A. Myself and Eschleman bought it.

Q. Did you pay for it?

3250 A. Yes, sir; I gave a note to them, and that note has been taken up.

Q. You say in your answer that with the exception of said assignment of Cunningham's interest in said purchase-money mortgage you have never received or accepted an assignment of any obligations of Oliver and Hawkins which are not made under and in accordance with the terms of the Buffalo agreement. Do you recollect when you purchased the E. & G. R. Haines mortgage; was it before or after you put in your answer in this case; the answer was put in the 13th of February, 1871?

A. I cannot tell; I think before.

Q. Did Oliver ever know that you bought that mortgage?

A. I cannot say.

Q. With the exception of that mortgage have you received any assignment of Oliver's indebtedness and obligations other than those called for by the Buffalo agreement?

A. Not that I know of.

Q. Will you look at this paper?—Complainant's "Exhibit F."

A. I do not think I ever saw that paper before.

Q. Have you any recollection of its being given you by Hawkins?

A. No, sir; I have no recollection of it.

Q. Have you any recollection of any similar proposition, either verbal or written, being made to you by Cunningham or Oliver?

3251 A. I have never heard of it as coming from Cunningham. I have heard just such representations come from him.

Q. What do you mean by representations?

A. How he stood.

Q. With reference to a proposition?

A. I have never heard any such proposition of Hawkins' about Gallup being receiver.

Q. Of parties taking it in trust to run it; buying an interest in it?

A. I never heard of it; the description of the property and his affairs I have heard him talk similar to that, and ask for help.

Q. Did you ever have an understanding with Cunningham that you were to help him in any way up there at Ossineke; help him to carry out any arrangement that Oliver thought he might make?

A. Never.

Q. Did you ever become his backer in this Ossineke arrangement?

A. No, sir; I refused to have anything to do with it in any shape.

Q. Do you know the firm of Cunningham, Robinson, Haines & Co.?

A. Yes, sir.

Q. Do you know who belong to it?

A. From what I have understood from them George J. Robinson, H. S. Cunningham, Calvin Haines, and Philip Ranney.

Q. Have you any interest in that firm?

A. No, sir.

Q. Were you ever a partner in it?

3252 A. Never, sir.

Q. Do you know whether Eschleman was?

A. I do not.

Q. Do you recollect being in Detroit, in Mr. Duffield's office, with some of these parties, and meeting a gentleman by the name of James B. Wayne?

A. Yes, sir.

Q. Will you state what occurred between you and him, with reference to some notes?

A. Haines made a bargain for some fixtures to him and King, and there was a note that this company had given; Wayne wanted that I should indorse the note; I told him the company was just as good without it as it would be for me to endorse it; but he claimed that it did not look so to him, as Eschleman and myself held the mortgage on the property, and he desired it on that account, and insisted upon it, and I did it.

Q. Did you tell him then that you were a member of the firm?

A. I told him I had nothing to do with it; that I was looking for my mortgage.

Q. Who was present?

A. Calvin Haines, the old gentleman Robinson, D. B. Duffield, and Wayne.

Q. Have you ever received any money upon the mortgage of Oliver to you; and, if so, how much, since it was made?

A. I think there was the interest—one installment.

Q. Was that indorsed on the bond?

A. I think it was (referring to the bond); yes, sir.

Q. How much did you receive?

3253 A. $2,400 in April, 1868; I have never received any money by way of payment from Oliver, or any one else.

Q. Have you ever received any lumber or logs, rents, or profits from the Devil river property in any way, shape, or form?

A. No, sir; not one board or stick. I have had some from there and paid for it.

Q. Have you ever had possession in any way of that property, or are you in possession of any of it now?

A. No, sir.

Q. Did you ever belong to any firm or number of individuals who were working that property?

A. No, sir.

Q. Did you ever agree to?

A. No, sir.

Q. You said you never received any assignment of Oliver's obligations, except the Haines mortgage, which you bought; state how that was bought, on your own motion or by the procurement of any one else.

A. I cannot say. I think the Haineses wanted to sell it.

Q. Did any third party have anything to do with it all?

A. Not that I know of.

Q. Did Cunningham ever have anything to do with it?

A. I do not know that he did.

Q. Did you ever talk with him about buying it at all?

Objected to as leading.

A. I do not think I did.

Q. Did he ever ask you to buy any of Oliver's indebtedness?

3254 Objected to as leading.

A. No, sir.

Q. Will you state whether, in your dealing with Oliver, you have at any time acted at the instance or request of any one else other than himself or his representatives?

A. I never have.

Q. So far as your own action with Oliver and his indebtedness is concerned, has any one else ever requested or asked you to do anything that you have done, or have you done it on your own judgment?

A. I have done it on my own judgment whatever I have done.

Q. Has Oliver ever claimed to you that he was released from the purchase-money mortgage?

Objected to as leading.

A. No, sir.

Q. What, if any, claim has he ever made about that mortgage?

A. I do not know that he has ever made any claim about it. I have never talked with him since I commenced foreclosure.

Q. At the time of the negotiation for the Buffalo agreement how were you acting with Oliver—on what terms were you towards each other?

A. We were on good terms, I suppose. He was around my house. I suppose he was on good terms.

Q. How were you towards him?

A. I was certainly trying to favor him. From his representation I suppose the other men were trying to rob him, and that was the reason he solicited my interest.

3255 Q. How did you come to be present at that conference at the time of the Buffalo agreement; at whose request did you come up?

A. I cannot say whether it was his or Hawkins'.

Q. Would you have come up on your own account if you had not been asked?

Objected to as leading.

A. I should not have come up if it had not benefited him, as I went to a great many other places for him at his wish.

Q. Did you have any interest in the agreement one way or the other?

Objected to as leading.

A. No, sir.

Cross-examination:

Q. How long have you resided where you do at present?

A. Over forty years. My present occupation is a farmer, and it has been during these forty years, since I was large enough. I have been acquainted with Cunningham fifteen or sixteen years. He has been my son-in-law five or six years. I have known Eschleman since we were boys. We grew up together since I was fourteen. We have never had any difficulty in any shape that I know of. Myself and Cunningham and Eschleman have been in the habit of transacting business together for a number of years; to a slight extent, so far as pine lands are concerned; that is all.

Q. Did you and Eschleman and Cunningham unite in purchasing from the Sault Canal Company the lands which you subsequently sold to Oliver?

3256 A. No, sir.

Q. Who made the purchase?

A. I and Cunningham made it, the largest portion of it, and a man by the name of Shaw.

Q. Who conducted the negotiation personally in the purchase of that land from the company?

Objected to as immaterial.

A. I do not know but I did have as much to do about it as any of them. I got the proposition and reported it to Cunningham.

I am mistaken. We bought, in the first place, with Vanvalkenburg, of Lockport, and Shaw, too. We had quarters in the first place.

Q. You say you got the proposition from the company in the first place?

A. Yes, sir.

Q. Did you make the proposition in behalf of all?

A. I got the proposition or condition from the company. If we were a-mind to do it, we had so many days to do it. I do not remember the price per acre.

Q. Would you be as likely to remember that as any other fact about the matter?

A. No, I could not. It was between one and two dollars, I should think. In buying the scrip of the company it brought it down. Vanvalkenburg did that.

Q. It stood you in about how much per acre?

Objection to all testimony with reference to this purchase.

A. I cannot tell.

Q. Did it stand you in over a dollar an acre?

3257 A. Yes, sir.

Q. When did Eschleman acquire his interest in room of Vanvalkenburg and Shaw?

Objected to as immaterial.

A. I cannot tell how long it was before we sold it to Oliver.

Q. Are you and Cunningham on good terms now?

A. I do not know anything to the contrary.

Q. How happens it that you are foreclosing a mortgage against his property?

A. Because I want the pay.

Q. Have you applied to him for payment of the mortgage?

A. I have never asked him for it.

Q. Have you ever applied to the firm of Cunningham, Robinson, Haines & Company for payment?

A. They knew I was going to foreclose.

Q. Have you ever applied to the firm of Cunningham, Robinson, Haines & Company for payment?

A. I do not think I have ever asked them; I told them if they did not pay it I would foreclose.

Q. Have you ever applied to them for payment of portions of the principal sums as they have fallen due, or for the interest as it has fallen due?

A. I never have.

Q. Since Cunningham became possessed of this property have you ever applied to Oliver for the payment of interest or principal upon the mortgage?

A. No, sir.

3258 Q. Have you ever dunned Oliver for any interest or any principal upon that mortgage since the Buffalo agreement, either in writing or by word of mouth?

A. No, sir; not that I know of.

Q. To your knowledge, has either Cunningham or Eschleman ever made application to Oliver since the Buffalo agreement for the payment of the interest or principal on the mortgage?

A. I do not know anything about that.

Q. How can you explain that statement in your direct examination, that you regarded Oliver as your debtor, if you have never applied to him for payment of this debt?

A. Because the papers are against him—the bond.

Q. Did you notify Oliver of your intentions to foreclose unless he paid since the Buffalo agreement?

A. I told him if I was not paid I was going to foreclose.

Q. When did you tell him so?

A. At my place after the Buffalo agreement.

Q. After Cunningham sold the property to Robinson, Haines & Company, did you ever apply to Oliver?

A. I told him if it was not paid I would foreclose it in a reasonble time.

Q. When was that?

A. After that.

Q. After the 1st of January, 1869, when Cunningham came out officially as a member of the firm of Cunningham, Robinson & Haines, did you ever apply to Robinson for payment and threaten foreclosure if he did not pay?

A. I cannot say whether it was before that or after. It
3259 was after he had sold to this company; he told me so.

Q. Do you mean after the 13th of November, 1868?

A. Yes, sir.

Q. At what place?

A. It was between my place and the depot. I told him if I did not get my pay I would foreclose.

Q. Will you explain why you delayed foreclosing when you were not in the receipt of any interest or any principal?

A. As quick as I got around to it I did it, as I was directed by counsel, at reasonable time. I was in hopes to get the pay without it.

Q. Were you in hopes of getting pay from Oliver without it?

A. I did not know where I should get it.

Q. From whom were you in the hopes of getting pay without foreclosure?

A. I supposed that that property would have to pay; I supposed it was good.

Q. What individuals did you expect would use the property to pay the mortgage?

A. I did not know.

Q. Did you expect that Oliver was going to use the property to pay the mortgage?

A. No, I did not. I did not know that they were going to resort to — pay it off the property.

Q. I ask you the question again; how did you expect to get the pay for that mortgage during the time you suspended foreclosure proceedings?

A. I do not know that I had any particular way in view
3260 any more than I did not know but they would arrange it and pay me.

Q. Whom do you mean by they?

A. I did not know but Oliver and they; they never offered to pay it, and never told me they were going to try to pay it.

Q. I ask you whether you did not expect, before you commenced this foreclosure, that the parties who had got actual possession and management of that property would pay your mortgage? I ask you as an honest man, to answer me that question.

A. I have answered it; I expected to collect it from the property if it was not paid, and I did not care who paid it.

Q. I have asked you why you delayed foreclosure; you said because you expected to get them to pay it, and under the advice of counsel; now I ask you how you expected to get them to pay for the property, without foreclosure, and from what individuals?

A. I do not know that I had any way of expecting the pay without foreclosing, and I told Oliver I should foreclose.

Q. Then if you did not get your interest and principal, why did you refrain from foreclosing?

A. That was probably my way of doing it; there are a good many men owe me that I have not pressed to foreclose.

Q. Did not you expect that the parties who bought the property to run, the property would pay that mortgage—interest and principal?

A. I never had any agreement.

3261 Q. Did not you expect that they would pay?

A. I expected to get it from the property.

Q. Answer my question; did not you expect that they would pay it?

A. I expected they would do it, or some one would do it, or they would be dispossessed of the property.

Q. I wish you would answer that question, yes or no; you know whether you expected they would pay or not.

A. I have answered it just as I understood it.

Q. You have said upon your direct examination that you told Wheeler & Weston, after the Buffalo agreement, that if they would purchase the property they should have time to pay your mortgage?

A. I did.

Q. Now did not you say the same thing to all the propositions of previous purchasers, and did not you say the same thing to Robinson, Haines & Co., when they purchased it?

A. I have. I said here I did not say so; they have never asked me to say that.

Q. Did not you say it to them?

A. No, sir.

Q. How happened you to say to Wheeler & Waston what you did not say to your own friends?

A. Oliver wished to not let them have it, and I did it to help him, just as I had kept off from foreclosing on him before.

Q. When you told Wheeler & Weston that if they would buy they should have time to pay the mortgage you expected to look to them for payment?

3262 A. With an arrangement—I expected to, if the wished me to.

Q. When the property was sold to Oliver, as Cunningham claims, did you know of any other property which he possessed, which did not pass into the hands of Cunningham, Robinson, Haines & Co.?

A. Not that I know of.

Q. Did you know of any means, money, personal or real property, or funds of any character, which he had, out of which you might reasonably anticipate the payment of your mortgage?

A. I did not.

Q. You knew that this property was productive—yielded lumber—I suppose?

A. I did not know anything about it, what it was doing, only what he said; I had never been there but once, and then he was doing nothing.

Q. In 1868, when Oliver came to your house, in the spring or summer, can you fix the date of his first being there, as near as possible?

A. I cannot fix any particular date; he was there a good many times.

Q. Was he always there for the purpose of making some business arrangement in regard to this mortgage and this property; or was he sometimes merely visiting as a friend?

A. He was always talking about it; that is all I know about it; I suppose he was there a number of times for me to induce Cunningham to take an interest—one-third or a quarter.

3263 Q. Did Hawkins come down from Ossineke, and come to your house, about the middle of June, 1868?

A. I do not recollect of his being there.

Q. Do you recollect seeing Hawkins at your house at any time during the month of June, 1868?

A. I do not.

Q. Will you swear that Hawkins did not come to your house about the middle of June, 1868, and show you this written proposition from Oliver, dated June 9, 1868, addressed to Hunt and Cunningham?

A. I will swear that I have no recollection of it.

Q. That is the fartherest you will go?

A. I cannot say, but he might have been there; he was there frequently.

Q. You say you knew that Oliver had talked about a trust before Cunningham went up to Ossineke?

A. I did.

Q. When did you first become aware that Cunningham was going up to Ossineke?

A. It might have been three or four days, and perhaps more, before he went away.

Q. How happened you to be in Buffalo the day he went away?

A. I cannot tell.

Q. Did not you come here by an arrangement with him for the purpose of receiving an assignment of his interest in that mortgage; did not he send out for you and Eschleman to come in, or did not you then make an agreement to meet here previous to his going to get ready for his start?

A. I cannot say.

3264 Q. Will you swear that you three did not meet in Buffalo the day before he went to Ossineke to make an arrangement for his going there?

A. I would not swear that that was the business, as I had other business there, and was here that day, and Eschleman was here. I

do not know but Eschleman was here on the board of supervisors.

Q. Will you swear that you and Cunningham and Eschleman did not meet on appointment that day to make arrangements with reference to his going to Ossineke, at Oliver's property?

A. It is my opinion that I met Cunningham at Williams' office during the assignment.

Q. The question is whether you three men did not meet here by appointment to make an arrangement for Cunningham to go to Ossineke?

A. I cannot say that; I do not recollect any such arrangement that was made there.

Q. How happened it that you got together to get that assignment from Cunningham the very day he started for Ossineke?

A. I cannot tell you that.

Q. Did not you three men, Eschleman, Cunningham, and yourself, arrange that Cunningham should go to Ossineke to take the transfer of Oliver's property; and to prepare for that did not you take counsel from Williams, and conclude that it was best that Cunningham should transfer his interest?

A. I never took any counsel on that.

3265 Q. Did not you know, before Cunningham went to Ossineke, that the purpose for which he went was to take a deed to Oliver's property?

A. I did not. I did not know what he was going up there for, and he told me he did not know what he should do when he went; that Oliver wanted him to go, and insisted upon it.

Q. Why did you and Eschleman take that assignment of Cunningham's interest in that mortgage without receiving any money from him and without receiving any obligation from him?

A. Receive any money from whom?

Q. Cunningham.

A. He did not ask for any money.

Q. The question is, why did you take the assignment?

A. We took it because we owned the largest share. We did not want anybody else to buy it.

Q. That is the only reason you can give?

A. That is my reason.

Q. How did it happen that you took it just before he went to Ossineke, and not before and not after?

A. We took it before, and we could not take it after.

Q. Why could not you take it after?

A. Because we had taken it before.

Q. What difference did it make whether you took it that day or any other day?

A. I don't know that it did make any difference.

Q. I ask you again, was not there an arrangement made between you and Cunningham and Eschleman that you should take the transfer, so that it would qualify him to take the assignment?

A. There was no such arrangement.

3266 Q. What was your own idea of what Cunningham should do?

A. I did not know; he said he did not know what he should do until he went there to look over the thing.

Q. Did not you expect that he would look after your interest as a mortgagee, and, as his father-in-law and his friend, did not you expect that he was going to protect your interest there?

A. I cannot tell what expectation I had at that time about it.

Q. Do you swear that Oliver was in Buffalo within two or three days before that?

A. I think he was in two or three or five days.

Q. Had not there been a meeting at Lockport before that?

A. I do not know anything about it.

Q. Had not Oliver come to your house and talked over the matter with Haines and Ranney and you, and hadn't he gone from your house to Lockport to talk the matter over?

A. I cannot say; they came to my house with Oliver.

Q. Who was at your house; yourself and Oliver?

A. They came for me, I recollect, when I went; Oliver was there, and Hawkins.

Q. And Calvin Haines?

A. I think so.

Q. Ranney?

A. I wont be certain.

Q. Can you state what the talk was?

A. No.

3267 Q. What did they come to you for; how happened it you were present at all of these conferences?

A. Oliver and his friend Hawkins wanted I should be there to assist him; he claimed they were robbing him, and I think one of the Haineses came down purposely to let me know about how the mortgage stood.

Q. Was not it because you had the first mortgage, and your own assent must be obtained to any arrangement that could be made; was not that the reason that you were present at every one of these conferences and interviews?

A. I could not tell what idea they had about it.

Q. You went merely as Oliver's hired man, I suppose; was that it?

A. You can have it in that way, if you want to; I went from his solicitation.

Q. Can you tell what arrangement was agreed upon at your house, at that time?

A. I cannot tell anything about it.

Q. Was not it that the Haineses should buy the property and pay off your mortgage and all other mortgages, and give Oliver $10,000 in money; was not that the arrangement that was talked of at your house at that time?

A. Oliver might have talked that, but I do not think they agreed to any such arrangement.

Q. Did they, or did not they?

A. They did not.

Q. Did not they agree to that, and did not they go to Lockport

for the purpose of reducing it to writing, and was not it reduced to writing, at Lockport?

3268 A. Not according to my understanding.

Q. And did not you then and there advise Oliver to take that offer and advise him it was to his benefit?

A. I did. What I asked and advised him to take—told him I would do it, but what it was I cannot say.

Q. Did not you expect that if that offer was carried out that the purchasers would pay your mortgage?

A. I expected that that mortgage would be paid if that property was good for anything.

Q. Did not you expect that if Haines & Co. took the property and agreed to pay the mortgage and pay $10,000 to boot, that they would become debtors to you?

A. I did not know anything about the $10,000. I expected if they had agreed to pay me they would, for I think they are men that would do it.

Q. Did not you expect that they would pay you if the agreement was made?

A. I could not expect that until they agreed to do it.

Q. Do you say that after the Lockport meeting was had that Oliver was in Buffalo up to the time that Cunningham left for Ossineke?

A. I cannot say anything about it; that Lockport meeting is something I do not know anything about.

Q. Will you swear that Oliver was in Buffalo between the time this meeting occurred in your house and the time Cunningham went to Ossineke?

A. I cannot say.

Q. Will you swear that Oliver was in Buffalo two or three days before Cunningham started for Ossineke?

A. He was about my house; I saw him within three or five

3269 days, and Cunningham might have been to my place; I cannot say when it was, but it was about here; he was here in this county, either at my house or here.

Q. How soon did you see Cunningham after his return from Ossineke?

A. I cannot tell that.

Q. Did not Cunningham, when he returned from Ossineke, state to you all that had happened during his absence from Buffalo?

A. He might.

Q. Did not he?

A. I do not know as he did.

Q. Will you swear that he did not?

A. I could not swear that he did not. I do not know what happened while he was gone.

Q. Did not he tell you what happened? There is the point.

A. I say that I do not know that he did.

Q. Did not Cunningham, upon his return to Buffalo, after he went to Ossineke and took this deed of Oliver's property, did not he tell you what he had done, and all that he had done while he was away?

A. I do not know that he told me.

Q. How did you find out that Oliver had deeded his property, real and personal, to Cunningham?

A. I found it out from what I heard them talk at the time they made this contract. I think he telegraphed to Oliver at the time they sold to this company, and then gave thirty days.

Q. Will you swear you did not know it before that?

A. I might have known it before. I recollect being here before, and heard it talked about.

3270 Q. Will you swear you did not hear it talked of before?

A. I won't swear that I did.

Q. Now, you say you took no part in the Buffalo agreement, and that it was of no interest to you. Let me inquire what you were here for even at the Buffalo agreement?

A. They requested me to be here.

Q. Why did you spend that time traveling from your home and come in here, if it was of no interest to you?

A. I, perhaps, had a notion to; I cannot say. I told you they asked me to come.

Q. Do you always do what people ask you to do?

A. I do what I think is right to do. Hawkins was murmuring that Oliver was not worth a dollar, and he was going to lose what little he had, and he wanted to get someway fixed so that he could get released.

Q. Will you explain to me how selling out this property, as was proposed for several months at the different conferences, where you were present, was going to help pay your mortgages, unless the purchasers applied the earnings of the property? How was it going to hasten your receiving your interest or principal, unless the purchasers paid?

A. I was in hopes that there was to be a way that they would pay me and fix it.

Q. You did not expect that if Oliver sold out all his property and got no money in payment for his property, that he could pay your mortgage, did you, or that he could pay any interest on it?

3271 A. I expected that the real estate that the mortgage covered would pay it as far as it would go.

Q. Did not you expect that that real estate, transferred into the hands of the purchasers, would furnish proceeds to these purchasers with which to pay your mortgage?

A. From the representation I got from Evans, who had looked the property over, he claimed that my mortgage was not good. He claimed it was not worth the face of it.

Q. That is not the question. I did not ask about Evans. I asked you if you did not expect the property subject to your mortgage, when transferred to these purchasers, would furnish proceeds to these purchasers with which these purchasers would pay the interest and the principal on your mortgage?

A. I was in hopes the change, if we could get one, would make it better.

Q. Did not you expect that the real estate mortgaged to you, when transferred to these purchasers, would furnish proceeds to

these purchasers with which they would pay the interest and the principal on your mortgage?

A. I say I had no offer from any one to pay me, and no agreement with any one, only Oliver.

Q. I ask you if you did not expect?

A. I did not know as the property would pay it. I did not know whether there was property enough to pay it. I did not know that it was good.

Q. I ask you if you did not expect?

A. I can answer it again: that I did not know what it would do. I knew nothing about the lumber business at all.

3272 Q. I ask if you did not expect?

A. I should have expected to get it that way, if any.

Q. I did not ask you whether you should expect; I ask you whether you did expect it?

A. I may have expected it.

Q. The question is, did you expect it?

A. I cannot say what I did expect at that time; it would have been reasonable for me to expect it; but I cannot say what I expected.

Q. Cannot you say whether or not you did expect it?

A. No; but it would have been reasonable for me to have expected it; no; what I did about Oliver that was no——; that the bond against him was not good for anything; that I should have to look to the real estate for it.

Q. You say you never read or heard read this Buffalo agreement, and yet you say a short time afterward, for the purpose of carrying out the Buffalo agreement, you received four thousand dollars from Robinson, Haines, and Ranney; how do you know you received it under the Buffalo agreement if you never read it or heard it read?

A. I heard it talked over at the time they made the writings; before they reduced it to writing.

Q. Did you write two letters to Oliver about that four thousand dollars, one on the 5th of November and one on the 9th of November, 1869?

A. I cannot say whether I wrote one or two.

Q. Can you explain why you wrote the second in five days after writing the first?

A. I cannot explain it; I do not recollect but one.

3273 Q. Do you know whether Cunningham, Robinson, Haines, & Company notified Oliver of the payment of that four thousand dollars?

A. No; I do not.

Q. How did they come to promise to pay you four thousand dollars and you not agree to receive it or know anything about it?

A. I cannot say about that.

Q. Were you not so far a party to the Buffalo agreement that you agreed to receive from Robinson, Haines, and Ranney four thousand dollars?

A. No, sir.

Q. You never agreed to receive it, but you did receive it afterward?

A. I received it; I never recollect any agreement being made about it.

Q. Do not you remember that you participated in this Buffalo agreement that you devised the various parts of it, and that therefore you agreed in Cunningham's office and in Williams' office that Robinson, Haines, and Ranney should pay you that four thousand dollars and that you should receive it?

A. I know it was no such thing; there was never any such arrangement made that I recollect of.

Q. How happened a thing to be performed that was never arranged or agreed upon; explain that?

A. I cannot tell you.

Q. What amount of money did you pay for the assignment of the E. & G. R. Haines mortgage?

Objected to as incompetent and irrelevant.

A. I have forgotten.

3274 Q. You said you gave a note, and afterwards paid the note?

A. I have forgotten how much it was; I cannot tell; I have forgotten the amount—four or six thousand dollars.

Q. Did not you buy that mortgage because they were out of this ring; because they were not connected with this property as purchasers or members of the firm of Cunningham, Robinson, Haines & Company, and did not you buy it in order to obtain control of all the securities?

A. I bought it because they wanted to sell it. They were afraid that there were too many mortgages on top of it.

Q. Has that mortgage ever been paid or discharged?

A. No, sir.

Q. You still hold it as an outstanding security against that property?

A. Yes, sir.

Q. Have you ever applied to Oliver for the payment of the principal or interest upon it?

A. No, sir.

Q. Did you take an assignment of another mortgage—the C. Haines mortgage?

A. Yes, sir.

Q. What did you pay for that mortgage?

A. I never paid anything.

Q. Did you ever pay Mr. Hawkins anything for the assignment of his mortgage?

A. No, sir; and I never requested it to be assigned to me.

Q. How did it come to be assigned to you?

3275 A. Hawkins requested that it should be assigned to me.

Q. Why did you accept an assignment?

A. It was in my absence.

Q. Do you mean to say that an assignment of mortgage was made and you didn't know anything about it?

A. I was not there at the time the mortgage was made.

Q. Haven't you accepted a delivery of the mortgage?

A. Yes, sir; but I mean at the time of the agreement to assign I was not there.

Q. Who caused that assignment to be made; did not Cunningham procure it to be made?

A. Hawkins told me they were going to assign it to me.

Q. What was the object of getting that under your control?

A. I cannot tell; it was Hawkins' object.

Q. You hold an assignment of mortgage, and you do not know what you hold it for?

A. No, sir; Hawkins wished the company to assign it to me.

Q. Did you receive, on the 2d day of October, 1868, an assignment, together with Eschleman, of the mortgage from Oliver to Calvin Haines and Philip M. Ranney?

A. I cannot say when it was.

Q. But you received the assignment; you remember that, I suppose?

3276 A. I don't recollect of ever having it, but they told me they had assigned it to me; I do not recollect of ever having it in my possession. Haines or somebody told me they had assigned it.

Q. Did they deliver it to you?

A. I am not certain about that.

Q. Did you ever pay anything to them for that assignment?

A. I never did to my knowledge.

Q. How happens it that you have received the assignment of Cunningham's interest in your mortgage, and the assignment of the Oliver mortgage to Haines and Ranney, and the assignment of the Hawkins mortgage, and never have given any money or given your written obligation as a consideration for this assignment of all of them, and how happens it that these various securities are all concentrated under your possession and control, and why did you receive the $4,000 if you had paid nothing at all; what was the object of concentrating all these things in your hands; explain that if you please?

A. There was a sort of condition about that $4,000; that the company was to pay so much, discharge one-half of the E. & G. R. Haines mortgage.

Q. What was that company to you? You have sworn that you hadn't any interest in it.

A. The company paid it to me. I had nothing to do with the company. I received the money and then wrote to Oliver where I should apply it.

Q. Why did you receive these various assignments without consideration?

A. Because these persons connected with the firm of Robinson, Haines & Co. chose to make them without consideration.

3277 Q. What did you accept them for?

A. As I understood about the Hawkins assignment, it was the request of the company to assign it to me. The Ranney assignment, I cannot say how that is. I never gave anything for it.

Q. Do you testify that you cannot explain why you accepted the assignment of the Haines & Ranney mortgage?

A. I didn't know they assigned it to me, and I never paid anything for it. They never explained it to me why.

Q. Can you explain why Cunningham assigned his share, and you never paid him anything for it?

A. We have paid him for it.

Q. You never gave him your obligation?

A. No, sir; we let him have money.

Q. You never paid him for it?

A. We paid a portion of it.

Q. You have never had any settlement?

A. I do not say that we have.

Q. Do not you say that you never have paid Cunningham one dollar for that assignment or given your written obligation?

A. I say we have paid him, expecting it to apply on that mortgage.

Q. Do not you know that no obligation has ever been made?

A. I know we have designed it, and I and Eschleman talked about it at the time.

Q. Do not you know that up to this time no obligation has ever been made of a single dollar?

3278 A. I do not know that. I know there has been money paid which was designed to go on that mortgage.

Q. You say Wheeler said it was not worth the amount; what amount?

A. The amount that Oliver asked from what he had seen.

Q. Can you tell me what that amount was?

A. No, sir. I cannot tell what this company was to give either.

Q. Was the amount Wheeler talked about the same?

A. Yes, sir.

Q. Did you receive a chattel mortgage from Cunningham, Robinson, Haines & Co. of certain personal property at Ossineke?

A. I think so.

Q. What was the consideration for that chattel mortgage?

A. It was the consideration of being their indorser.

Q. How happened you to indorse for Cunningham, Robinson, Haines & Co.?

A. Because they wanted I should and asked me to.

Q. You don't always indorse for people because they ask you?

A. I do where I take a notion. I indorse for a great many. There are a great many I indorse for in this county.

Q. Didn't you go up to Detroit on purpose to see that Cunningham, Robinson, Haines & Co. got sufficient machinery to put that property in good running order, so as to make good earnings?

3279 A. I went up there partly of my own curiosity to talk about the foreclosure and the time, and partly because Cunningham wanted I should on his business.

Q. What was his business?

A. His business was to put proper machinery there.

Q. What interest was it to you whether proper machinery was put in there, unless you had an interest in the earnings?

A. I went for Cunningham.

Q. Did not you expect that these earnings were to be applied for the payment of the interest on your mortgage?

A. I cannot answer in any other way than I have.

Q. In going to Detroit to help Cunningham to get machinery to put in the property did not you have in view the object of enabling the company to pay your interest and principal?

A. I was in hopes they would be successful and pay it. That is all there is about it.

Q. Pay what?

A. Pay all they agreed to pay.

Q. Were you in hopes they would be successful and pay you your interest and your principal?

A. If they agreed to I was.

Q. You may as well come right to the point. Did you have in view, in going to Detroit and helping Cunningham to get machinery put on that property, the object of enabling Robinson, Haines & Co. to pay the interest and principal on your mortgage; did you or not have that in view?

A. All I had in view was to get the business improved.

Q. Did you or did you not have that in view?

A. I do not know that I had that in view.

3280 Q. Will you swear you did not have it in view?

A. I shall swear that I do not know that I had it in view.

Q. Will you swear that you did not have it in view?

A. No; I don't intend to swear that I did not have it in view.

Q. Have you been to Detroit more than once for that purpose?

A. No, sir.

Q. To what extent did you endorse for the purpose of obtaining machinery to go upon the property?

A. I cannot tell that amount.

Q. Did you ever tell anybody that you had bought teams or supplies, or property of any kind for the property up there?

A. No, sir; never, that I know of.

Q. Did you ever purchase teams?

A. No, sir; not unless I did it to accommodate; unless they asked him to.

Q. Did you accommodate Cunningham, Robinson, Haines & Co.?

A. I do not think I ever did.

Q. If you ever did, you know it. Did you ever buy teams to send up to that property?

A. I told you if I did I do not know it. That is all there is about it.

Q. Will you swear that you didn't purchase teams to send up to help work that property?

A. If Cunningham sent out and asked me to go and see a team

and buy it I might have done it, but I do not now recollect.
3281 If a team was mentioned it might refresh me. I do not recollect of a team. If I did I did it under his wish and direction, asking me to do it; I should have done it if I had been asked to.

Q. Did you not do it?

A. I tell you I do not recollect it.

Q. Have you ever examined the business of Cunningham, Robinson, Haines & Company?

A. No, sir; I never have.

Q. You say in your answer that you always understood that Cunningham held title to make sale. I want to know the source of your understanding?

A. I recollect well. I understood it from the time I was up here that day that they made the contract with the company to sell. I recollect that time and understanding then.

A. Can you explain why you omitted from your answer in reference to the allegation in the bill that these assignments of these various mortgages were made to you without any consideration?

A. I could not explain it.

Redirect:

Q. With reference to the price paid by you for the land you sold Mr. Oliver, was there a different price paid the Canal Company, a different price paid to Vanvalkenburg, and a different price paid to Shaw?

A. Yes, sir; and I cannot tell the price of either one of them.

Q. Which price do you refer to when you say a dollar or two?

A. That was the Sault Company; the first price.

3282 Q. Were the other prices larger?

A. Yes, sir; double prices; that is, Vanvalkenburg's was double the price of the Sault company.

Q. And Shaw's; was it greater or less than the original price?

A. I don't think there was a great deal of difference.

Q. Did all of those lands have the same price per acre?

A. No, sir.

Q. Some less and some more?

A. Yes, sir.

Q. Mr. Russell wants to know since Oliver has transferred this property why you haven't asked him for these payments; will you give the reason why you do not ask him for payment since he transferred this property?

A. The reason was I did not suppose it would do any good to ask him; from what Hawkins said about him I did not suppose he was worth a dollar.

Q. In one of your answers to Russell's questions about a trust, you said that you knew something of a trust that Oliver talked about Cunningham taking the land under; what trust do you mean?

A. The trust to hold it until he could sell it.

Q. Any other trust?

A. No other trust that I know of.

Q. About your being here at the time of the assignment of the Cunningham interest; how often do you come to Buffalo?

A. Sometimes I come every week; I have been here as often as twice a week when I had business; I have been here to collect or sell stock to men here.

3283 Q. Was that the time of the year when you would be likely to be coming here?

A. I cannot say what business I had here that day.

Q. Will you state whether you expected in any of these arrangements for the selling of the property that the purchasers of the property would pay your mortgage in any other way than because it was a lien on the property?

A. That is all the way I expected they would pay, if the property was worth it; I expected to get it on account of a lien.

Q. State whether or not there was ever any talk about an arrangement by which the purchaser should promise to pay you?

A. There never was any; I do not recollect of any.

Q. Was Oliver ever released, or to be considered released, from personal liability in any of these arrangements?

A. He never was, to my knowledge.

Q. Mr. Russell asks you if Mr. Cunningham did not state to you before the Buffalo agreement what had been done between him and Oliver at Ossineke; now, do you recollect whether you saw Cunningham at all after he returned from Ossineke until the Buffalo agreement?

A. I cannot say whether I saw him or not.

Q. Why did Hawkins want his mortgages changed from the Hainses to you; did he ever tell you?

A. No, sir; I do not know that he ever did.

Q. Do you know why?

A. I do not; I was not there when it was done.

3284 Q. Were the releases between Hawkins and the Haineses formal or otherwise?

Objected to as hearsay.

A. Hawkins claimed that they were not in his——

Q. What was your release to Hawkins?

A. I suppose it is all right; I suppose it is now; I have been helping him, and letting him have money.

Q. Had you at that time?

A. Yes, sir; I have always helped him; he owes me money to-day.

GARRET B. HUNT.

Subscribed and sworn before me, this 30th day of August, 1871.

JAMES SHELDON,
United States Commissioner.

JACOB ESCHLEMAN sworn:

I live at Clarence, Erie county, New York; I am a farmer; lived in Clarence forty years; I was on the Devil river property a few

years before it was sold to Oliver; I have never been there since; I do not know anything about the value of the property and the improvements there now.

3285 Q. Did you ever know of any arrangement of any kind between Cunningham and Oliver, in the fall of 1868, with reference to the Devil river property—I mean at the time?

A. No, sir.

Q. Were you here in Bnffalo at the time Cunningham assigned his interest in the mortgage of Oliver's to you and Hunt?

A. Yes, sir.

Q. Do you know what day that was on?

A. No, sir; I cannot tell the exact day; I was there when the assignment was made out; the parties present were Cunningham, Hunt, Williams, and, I think, his clerk was present.

Q. Do you know whether there was any different date to that instrument than the day on which it was executed?

A. I think not.

Q. Was there any conversation about the date?

A. No, sir; not any.

Q. Do you know what Cunningham did after that?

A. If I recollect right he was going to leave the city that afternoon; either that afternoon or the next day, but I think it was that afternoon or that evening.

Q. Did he or Mr. Oliver tell you anything about where he was going or what he was going to do?

A. I understood that he was going to Michigan—from him.

Q. Do you know where in Michigan?

A. I think he was going up to this property; he went up there with regard to some of Oliver's, I believe; as far as I can recollect about it; I do not know for what particular purpose.

3286 Q. Did he have any authority from you or Mr. Hunt, to your knowledge, with regard to your mortgage, in making any arrangement with reference to it?

A. No, sir, not any.

Q. Was your mortgage talked about in connection with his visit there in any way that you know of?

A. Not any.

Q. Have you evar made any agreement with Oliver, or with any one representing him, with reference to that mortgage or its time of payment?

A. No, sir, nothing different from the mortgage.

Q. Have you ever authorized any one to make such an agreement for you?

A. No, sir, not to my knowledge.

Q. What authority concerning the disposition of that mortgage had Hunt?

A. He owned one-third interest previous to purchasing the other third.

Q. Was that all. Did you ever appoint him agent or anything of that kind for you?

A. No, sir.

Q. Did you ever hear from Oliver what had been done between him and Cunningham at Ossineke?

A. No, sir, I never had any conversation, to my recollection, with Oliver about that.

Q. Did he ever talk with you about it?

A. I think not.

Q. Will you tell us what you know of the Buffalo agreement, as it is called, a negotiation and agreement between Oliver, Robinson, Haines, and Ranney, if anything?

3287 A. I might answer that I don't know anything about it but what I have heard talked by different ones; I don't know who talked about it.

Q. Were you present at the time the agreement was made?

A. I was in the city that day when they talked of making an agreement. I was in the office where there were several of them met together. I think Oliver was there. I didn't hear the conversation. I was not called to take part in that in any way by anybody. I did not hear them talk anything about it. I was not there during the whole time. I was there probably half an hour in the morning. I did not go to Williams' office at that time; I was in here on business. I had leisure in the morning. I was running around until about nine or ten o'clock, and I happened to get in there. I do not know that I know anything about this matter. I might have known and I might not have known; I cannot tell it. I know that I did not go there purposely on this business.

Q. After the Buffalo agreement was executed was there any arrangement, and what was it, with reference to the payment of the Eschleman and Hunt mortgage?

A. I have not made an arrangement and I have not heard of any arrangement with anybody different than the mortgage.

A. Has any one ever claimed a different arrangement?

A. Not to me.

Q. Has Oliver?

A. No, sir. Nobody; I know the firm of Cunningham, Robinson, Haines & Co.

3288 Q. Do you know who the partners are?

A. I do not know that I do—Cunningham, Robinson, Haines & Co.; I can't tell which of the Robinsons; the young man, I believe, and C. Haines; I am not a member of the firm; I do not know whether Hunt is or not; I do not know whether H. M. Robinson is or not.

Q. Have you ever had any money on that mortgage by way of payment for Oliver?

A. Yes; I have had settlements.

Q. When was that?

A. One year's interest, I believe; the first year's interest, I think. I have never received any money.

Q. At the time you and Hunt sold your property to Oliver I did not see any cash paid down.

A. I have not had possession of any part of the property since the sale to Oliver; I have never received anything off of that.

Q. Have you any knowledge or did you ever hear of any agreement by you and Hunt that you were to defer the payment of your mortgage until all of Oliver's other debts were paid?

A. No, sir.

Q. Did you ever make any such agreement?

A. No, sir.

Q. Ever authorize any one to make such an agreement?

A. I never did.

Q. Did you ever know about an agreement between Oliver, two of the Haineses, and some other parties, perhaps, at Lockport?

A. No, sir.

3289 Q. Did you and Hunt, or you individually, as owners of that mortgage, have any arrangement about its disposition with Cunningham—leave it with him, giving him authority to make an arrangement about its payment, and, if so, what was that agreement?

A. I do not recollect, but I do not think we made any arrangement.

Q. This assignment of Cunningham's interest in this mortgage to you and Hunt, which has been put in evidence—will you state what the consideration for that assignment was—whether paid in money?

A. He received the money on that assignment, but not at the time he made it. I think, as near as I can recollect, he received between four and six thousand dollars; I think there was six thousand.

Q. Have you ever had any agreement with any person or persons whatever with reference to the payment of this mortgage in a different way from the mortgage with any person or persons whatever?

A. No, sir.

Cross-examination:

Q. Has Hunt been in the habit of transacting business for you, to a considerable extent, in matters where you were jointly interested?

A. No, sir; I think not.

Q. How long have you known Hunt?

A. I have known him rising 20 years.

Q. How long have you known George J. Robinson and Henry M. Robinson?

A. I have known them since they got into this trade.

3290 Q. Did you make their acquaintance at the time you came here to attend the Buffalo agreement?

A. I could not tell you; I saw George Robinson at that time; I do not know that I ever saw him before; I could not tell you whether I saw the old man then or not; I could not say whether I had seen him before that.

Q. I want you to reflect a little with regard to whether Hunt has not been in the habit of transacting business, representing you in matters where you were jointly interested?

A. I stated that I did my own business.

Q. Has not he frequently represented you in your joint matters?

A. Where we were interested in the same acts, such as buying this land or selling this land.

Q. He represented you in that?

A. I do not know that he represented me. I represented myself.

Q. Did he do business for you?

A. I did it myself.

Q. Do you swear that he has never represented you in any of his joint transactions?

A. I do not know that he has.

Q. After this property was sold, as is claimed, to Cunningham, Robinson, Haines & Co., and they proceeded to run it and got the earnings of the property, did not you expect that they would apply those earnings to the payment of the interest and principal upon this mortgage?

A. I did not know what they would do.

3291 Q. I did not ask you what you knew; I asked you if you expected?

A. I expected that that had to be paid by somebody; and I expected they thought it subject to claims and undoubtedly they would pay it.

Q. You had expected that they would pay the interest and principal of your mortgage out of the earnings of the property?

A. I expected parties who bought it, of course, would pay it, or see that it was paid.

Q. Have they ever done it?

A. No, sir.

Q. Have they ever paid any portion of the other incumbrances upon that property, to your knowledge, either principal or interest?

A. I do not know.

Q. Do you know what they have done with the proceeds, the earnings of the property?

A. No, sir.

Q. Have you ever made any inquiry upon that subject?

A. No, sir.

Q. I believe you have got no principal or interest on the mortgage since then?

A. No, sir.

Q. Did not you feel a little interest to make a little inquiry into the matter and find what was being done with the matter?

A. That was the reason I commenced foreclosure.

3292 Q. Before you commenced foreclosure did not you feel some interest in finding out what was being done with the property?

A. I felt some interest, but I never could find out anything. I did not know where to go.

Q. Did you undertake to find out?

A. I did not know what I would do to undertake it. I did not know whether there were any earnings there.

Q. Did you undertake to find out whether there were any earnings there?

A. No, sir.

Q. How long have you known Cunningham?

A. I should think probably 20 years.

Q. Did you know him before he became son-in-law to Mr. Hunt?

A. Yes, sir.

Q. Are you on bad terms with Cunningham, Robinson, Haines & Co.?

A. No, sir.

Q. Why then do you undertake to foreclose upon this property and cut them off. What is the object of it?

A. All I know about that is that I ordered this mortgage to be foreclosed. I didn't know who the parties were and nothing about it. I supposed that our counsel would understand that, and foreclose when it was necessary—proceed against all parties.

Q. You know that Cunningham, Robinson, Haines & Co. are in possession of this land, and working it, don't you, the land that is mortgaged to you?

A. How could I know that?

Q. Do you know it?

A. No, sir; I do not know it.

3293 Q. Who is in possession of it?

A. I cannot tell you. Somebody is.

Q. Did not Cunningham, or Robinson, or Haines, or any of them ever tell you that they were working it, and cutting off timber at a pretty rapid rate?

A. I supposed they were.

Q. Did you ever apply to Cunningham, Robinson, Haines & Co. for payment in money on account of the mortgage?

A. No, sir.

Q. You did not expect to get pay without asking, did you?

A. I supposed that the parties interested would say that it was paid, and I had expected Haines to say that it was paid.

Q. Did you ever apply to Oliver for payment of the principal, or interest, after this Buffalo agreement, before commencing suit?

A. No, sir; I do not know that I did.

Q. You say that four or six or eight thousand dollars has been paid to Cunningham for his interest in the mortgage which he assigned to you; will you state when and where and in what sums those payments were made—or any of them?

A. In the fall of 1868 we paid him $4,000.

Q. Who do you mean by we?

A. Myself and Hunt.

Q. Can you produce a receipt for the money?

A. No, sir.

Q. Can you show its indorsement upon the assignment?

3294 A. No, sir.

Q. Can you give any written evidence of the fact?

A. No, sir.

Q. Did you take any obligation from him to pay you any money when he made the assignment to you?

A. No, sir.

Q. He paid you none then?

A. No, sir.

Q. And you testify now that you paid him $4,000 in the fall of 1868?

A. Yes, sir.

Q. What individual paid it to him?

A. I think I paid the greatest portion myself.

Q. With your own hands?

A. Yes, sir; I don't know but the whole.

Q. Had you any money transactions with Cunningham besides the alleged purchase of this interest in the mortgage?

A. We had some transactions previous to this.

Q. And some since, I suppose?

A. Might have had some since.

Q. You had run accounts with him—various accounts; didn't you?

A. Some.

Q. Do you swear that you paid him $4,000 or any sum as and for a part of the purchase-money of his interest in that mortgage and made that application?

A. I considered, since we had this assignment of his mortgage, that we paid that part towards it.

Q. What is the ground of your considering it so?

3295 A. The ground that I had the assignment I considered it safe to pay him some money.

Q. Did either you or he apply that $4,000 upon the assignment of that mortgage?

A. That is the reason that I paid it to him.

Q. Did you apply it or did he apply it as and for a part of the purchase-money of his interest in that mortgage?

A. I did; I paid it to him.

Q. Did you apply it upon that—not that you paid it to him?

A. I did.

Q. How did you apply it?

A. I paid him the money.

Q. You owed him other sums, did you not?

A. No, sir; it might have been a few dollars less than a hundred.

Q. Did you take any written statement that you applied it upon the purchase-money of that mortgage?

A. No, sir.

Q. It was endorsed nowhere?

A. No, sir.

Q. Is that the way you do business generally?

A. I do considerable that way—more than I ought to.

Q. Do you know whether he made any endersement or any statement or entry?

A. I do not.

Q. Do not you know that he did not?

A. No, sir; I do not.

Q. Can you give the date of your payment of the $4,000 to him?

3296 A. It was in the fall of 1868, the 1st of October, I think; about the 1st. It may have been the 1st of November.

Q. What sort of funds did you pay it to him in; cash or drafts?

A. I think that he got the currency.

Q. Go to the bank and get the money?

A. I got it at different places. I got some at the bank.

Q. Did you go into town on purpose to pay it to him?

A. I was in town about all the time at that time. I was here for a month or two at a time.

Q. Why did you use this language: You say, inasmuch as he had assigned his interest in the mortgage by a paper, you thought it was safe to pay him some money. What do you mean by that?

A. I mean that it was security for paying him the money. When he assigned his mortgage there was no price set that he should have for it.

Q. Has there ever been any price set or bargain made what he should have for it up to this date?

A. No, sir.

Q. How happened you to receive that assignment on that particular day?

A. It seems that he wanted to sell it.

Q. Did he send for you to come into town?

A. I was to be in town about that time. I think he didn't send out. I was in town weeks at a time.

Q. Why did he make that assignment just before he started off to Oliver's property?

A. I do not know. I supose that he wanted some money.

3297 Q. He did not get any?

A. He got some afterwards.

Q Did you make any entry of the payment in any book kept by you?

A. I have no book. I kept a small memorandum-book and have lost it. The fact is, I have lost that year's memorandum-book. I referred to the book to find out certain dates, and I could not find the memorandum book.

Redirect examination:

Q. Mr. Russell asks you if you did not inquire to see whether the firm of Cunningham, Haines & Company had made any profits. Was there any understanding or agreement by means of which you could compel Robinson, Haines & Company to pay you any profits there?

A. No, sir. I should consider it an insult to inquire anything about their business.

Q. Did you have anything to do with their profits?

A. Never; no, sir.

Q. Was there any understanding that they were to be applied on this mortgage?

A. No, sir; never.

JACOB ESCHLEMAN.

Subscribed and sworn to before me, this 30th day of August, 1871.

JAMES SHELDON,
United States Commissioner.

3298 PHILIP M. RANNEY, sworn:

I am 25 years old. I live in Buffalo. I have lived here over two years. Before that I lived at Lockport. I have lived there since 1856. I have been in business for myself for five years. I went into partnership with C. Haines Jan. 1, 1867. I know Oliver. I know the Devil river property. I have been there. I think the first [time] I was there was in 1868; it might have been 1867, but I think it was 1868. I did not go through the pine lands at that time. I went over the part of the property where the improvements were. The first time I went there I think they had not built the steam mill. They had not got it finished.

Q. Are you competent to judge of the value of that property, that part of it which you saw, from your experience gained in business?

A. I can make a statement of what I think they were worth, of course.

Q. What experience have you had? Do you know anything about the value of mills?

A. No, I do not.

Q. Was Oliver indebted to the firm of C. Haines & Co., in 1868?

A. Yes, sir.

3299 Q. By mortgage?

A. Yes, sir; on a mortgage; some moneys, I believe, that we got a mortgage for. In all, I think, Oliver, and Oliver & Robinson owed us about $22,000. We had a $10,000 mortgage and $4,000 chattel mortgage.

Q. Had you any business connection or other connection with Henry S. Cunningham in October, 1868. Were you partners with him?

A. No, sir; we were not.

Q. Did you know anything about Cunningham's visit to Ossineke in 1868, at the time he went, or before he went?

A. No, sir.

Q. You had an agreement with Cunningham as representing Oliver in October, '68, in Buffalo?

A. Yes, sir.

Q. Who are the parties to that agreement?

A. Henry S. Cunningham, George D. Robinson, and C. Haines & Co.

Q. Who are C. Haines & Co.?

A. Calvin Haines and myself.

Q. How was that agreement first initiated, who first began the negotiation?

A. I think Cunningham wanted to sell the property to us. I saw Oliver during the course of those negotiations. I should judge about a week or ten days before the thing was settled. It was in Buffalo that I saw him.

Q. Did you talk with him any?

A. Yes, sir.

Q. Who represented your firm?

A. I think I was here more than Haines, and took more part in it.

3300 Q. He took some part in it, did he?

A. I could not tell; I have very little remembrance about his being here.

Q. Did you talk personally with Oliver about this agreement?

A. Yes, sir.

Q. How often did you talk with him?

A. I could not tell; I suppose we were all there together; we were interested in knowing about the property; I had more than one interview with him; I remember seeing him in Cunningham's office, and also in Williams' office.

Q. Was any agreement made between you and Cunningham that Oliver did not know of?

A. Nothing that I know of.

Q. Had the agreement, as it was finally consummated, been talked over with Oliver—over all of it?

A. Yes, sir.

Q. What did Oliver say to it?

A. He seemed to be satisfied with the agreement.

Q. In these negotiations and this agreement in Buffalo did you have any agreement with Hunt and Eschleman about their mortgage?

A. No, sir.

Q. Did you talk with them about their mortgage—what they had done and what they should do with it?

A. I do not know that we did. I understood if we bought the property they would be lenient with us and would not push us. I understood if we took that property, they considered that we bought the property—that they would get their pay. Haines was a man of means.

3301 Q. Did you ever agree to pay the mortgage?

A. No, sir.

Q. Did Haines to your knowledge?

A. No, sir; he never did, to my knowledge.

Q. Was there any agreement made by Oliver in connection with this Buffalo agreement—made by him personally?

A. I think he made an agreement; he had some lands there; he claimed it was a homestead.

Q. The fact whether he did make any separate agreement of his own?

A. Yes, sir; he made an agreement there; it was about the home-

stead. In case we bought it we didn't want him coming in on damages in case we overflowed the homestead or anything of that kind.

Q. Was that the agreement put in writing, about flooding the homestead?

A. I suppose it was.

Q. Is that the agreement? (Presents paper—"Exhibit A.")

A. Yes, sir.

Q. Do you recollect under what circumstances that was made, and where?

A. It was made in Williams' office. George D. Robinson, myself, and Oliver and Williams were present, and I think Cunningham. I dont know that Hunt and Eschleman were there then; Hawkins was there.

Q. Did you remain until the agreement between you and Cunningham, representing Oliver, was reduced to writing by Williams, and did you sign it?

3302 A. I was there and signed the firm name; Haines was not there.

Q. You heard the agreement read at that time, did you; was it read over before it was executed?

A. Yes, sir.

Q. State whether it differed in any way from what you had talked?

A. It differed in no way at all.

Q. Did Oliver remain to see it signed and executed?

A. My impression is that Oliver did not remain until it was signed. I know that Hawkins was there, and in his stead, as I understood it.

Q. What made you think that Hawkins was there in Oliver's stead?

A. My impression was that Oliver gave those instructions and stated it before us all that he would leave Mr. Hawkins there in his place; whatever he did would be right. In my remembrance he did make that statement.

Q. The agreement that was made appears to be in two different handwritings. Do you know how that came?

A. I remember seeing Mr. Williams writing. He was writing part of it while the other sheets were being copied. He read the first and sent them out to be copied by Barton, and he was writing there. We were in a hurry.

Q. Do you know the reason that Williams did not have the entire thing copied?

A. We were in a hurry to have it finished up. I think it was in the evening when we closed it up. I am pretty sure it was after four o'clock, anyway.

Q. Why were you in a hurry to close it up?

3303 A. It had all been decided and we wanted to finish it up; I did. I wanted to put the signatures to it. I wanted to go back to Lockport.

Q. Your firm had a mortgage upon lands of George W. Hawkins in Niagara county?

A. Yes, sir; and I think in this county also.

Q. Was this mortgage assigned to any one in pursuance of this agreement; and, if so, to whom?

A. I believe it was assigned to Hunt. Hawkins requested me to assign it to Hunt.

Q. (Presents "Exhibit Q.") Is that it?

A. Yes, sir.

Q. Was the mortgage of Oliver, upon some of the Devil river property, assigned to Robinson, Haines & Co.?

A. Yes, sir.

Q. Do you recollect the date of that assignment?

A. Yes, sir; the 2d day of October.

Q. The day before the Buffalo agreement?

A. Yes, sir.

Q. Will you state why the Oliver mortgage to C. Haines & Co. was assigned the day before the Buffalo agreement was made?

A. We were about to buy the property, and there were other claims on the property, and we didn't want any claims in ahead of that claim.

Q. Were there other claims on the property besides those which you were to take care of in the Buffalo agreement?

A. We did not agree to take care of any; we bought it subject to them. There were other claims.

Q. Was this assignment made of your own motion?

3304 A. Yes, sir.

Q. Did you take any legal advice?

A. I asked Mr. Williams if I took the title to it while we held the mortgage; whether it would merge the mortgage in, so that it would not be good for anything, and he said he thought it would. That is my impression.

Q. And was it in consequence of that that this assignment was made?

A. Yes, sir.

Q. Hunt never paid you anything for that assignment, did he?

A. I never got anything for it.

Q. In the Buffalo agreement there is a period of 30 days, during which the agreement was not to operate; will you state why that was put in, and what its object was, and at whose request?

A. We did not want to take the property in the first place; we wanted somebody else to buy it if they would, and we consulted with Oliver, and he was confident he could sell it to other parties; all we wanted was our money, and if he could sell it to anybody else he had the privilege to do it in 30 days; not only in 30 days, but we gave him afterward; if we could get our money we were willing to sell the property.

Q. Why did you consider it necessary to take the property in the fall of 1868? Under this arrangement why did you think it necessary to close it that fall?

A. We thought we could never get pay out of it unless we did buy the property.

Q. Why did not you give longer time than 30 days?

3305 A. He once gave us the refusal of the property to pay debts and $10,000. We had somebody to look over the property, and he thought it was not worth that, and we should not take it, and he gave us 30 days to look it over.

Q. Had the season of the year anything to do with closing this up?

A. If we took it we had to put our supplies right in, and we understood that what supplies we put in, if anybody else bought the property, they were to pay us for these. We had to go right on and put the supplies in. We could not wait any longer.

Q. Did you have at any time with Oliver, or Cunningham, as his representative, any agreements as to the payment of the Hunt and Eschleman mortgage, or any of these claims mentioned in the Buffalo agreement other than those expressed in the written agreement?

A. No, sir.

Q. Have you at any time subsequently agreed to pay those claims?

A. No, sir.

Q. When did you first hear, if ever, that Oliver objected to this agreement, and claimed that it was not as it should be?

A. I think it was the summer of 1869.

Q. How did you hear it?

A. I remember hearing that Oliver had been up on the lakes looking at that, and saying that he was going to have the property back.

Q. Did he ever come to you personally and claim anything wrong in that agreement?

A. No, sir; never.

Q. Did he ever write you to that effect?

3306 A. No, sir; I have never seen any, at least.

Q. When did Cunningham go into copartnership with you and Haines and Robinson?

A. In January, 1869, I believe.

Q. When did he first talk about going in with you?

A. That was the first I heard about it; in 1869.

Q. Did you have any understanding of that kind, or look towards going into partnership at the time of this agreement?

A. No, sir.

Q. Did you pay Cunningham anything for that agreement, personally, apart from his connection with Oliver?

A. I never paid him a cent.

Q. Do you know whether he received any benefit from that agreement personally?

A. No, sir; I do not think he ever got a cent.

Q. Who is operating the Devil river property now.

A. Cunningham, Robinson, Haines & Co.

Q. Who are?

A. Henry S. Cunningham, Geo. J. Robinson, Calvin Haines, and P. M. Ranney.

Q. Has Hunt any interest in the firm?

A. No, sir.

Q. He has no interest in the property, other than his mortgage, that you know of?
A. None at all.
Q. Has he ever claimed any?
A. No, sir.
Q. Has he ever received any profits of the firm as a partner?
3307 A. No, sir.
Q. Has he received any profits anyways?
A. No, sir.
Q. Is Eschleman a partner with you?
A. No, sir.
Q. Has he ever received any of the profits of the firm?
A. No, sir.
Q. Has he ever claimed any interest in the property up there?
A. No, sir; not above his mortgage.
Q. Is Henry M. Robinson in the firm?
A. No, sir.
Q. Has he ever claimed any interest in the property?
A. Never to me.
Q. Did you ever hear of his claiming any?
A. No, sir.
Q. Or Hunt or Eschleman?
A. I never heard of any of them claiming any interest.
Q. Did you ever say anything to Hunt, at the time Oliver came down here, about his going into the concern, or taking any interest in the property?
A. I have heard him say that he didn't want anything to do with the matter; it was not his business; farming was his business.

Objected to as proving the statement of one defendant by another defendant.

Q. (Presents paper to witness). Do you know anything about that paper?
A. Yes, sir; this is Oliver's quit-claim deed that he agreed to give the company when we bought.
Q. Whom did Oliver give that to?
3308 A. I think he gave it to Geo. J. Robinson.
Q. Were you present when he gave it to George?
A. No, sir.
Q. Do you know anything about the way the timber has been cut by your firm at Ossineke?
A. In the usual way.
Q. Seen the timber that has come from there?
A. Yes, sir.
Q. How does that run?
A. I should judge last year it ran about 22 or 25 per cent. culls, about 12 per cent. uppers.
Q. How is that?
A. That is just a fair run; it runs heavier — the culls, as is usual.
Q. What does that show?
A. It shows that they cut the timber to advantage—that is, they

have cut it close; for instance, a man cutting a tree may cut so the stake is all left in the stump not taken down to the log, and it would run higher to uppers and not so many culls; but they cut it close, so as to get all the timber there was.

Q. What does that show, if anything, with reference to the selection of timber?

A. It looks as though it had been cut right along; if they have taken all the good timber I do not know where the poor is.

Q. Do you know anything about a company called the Ossineke Lumber Company?

A. No, sir.

Q. Did your firm ever have that name?

A. No, sir; we never had that name.

3309 Q. Did you ever use that name in any way in your business?

A. I know that George J. Robinson had stencil-plates made for bags saying "Ossineke Mill Company;" I saw it up there; our bags were marked in that way; the bags that were sent for feed back and forward; Ossineke gives the name of the place it goes to; the reason he gave for doing it was because the firm name was so long.

Q. Is that the only way the name has been used?

A. That is all; probably some tools might have been marked so.

Q. Were Hunt and Eschleman consulted at all in respect to their mortgage interest with reference to your Buffalo agreement and Mr. Oliver?

A. I do not know that they were.

Q. Who did Hunt appear to represent in this negotiation?

A. He was there to represent his interest in the mortgage.

Q. Did he represent anybody else?

A. Never that I know of.

Q Do you know who got him there—who sent for him?

A. No; I do not.

Q. What were the relations at that time between Hunt and Oliver—friendly or otherwise?

A. Friendly.

Q. Whom did Hunt appear to be acting for—in whose favor?

(Objected to.)

3310 A. I do not know that he acted in any one's favor; as to whether he was a friend of Oliver's, Oliver was stopping with him; I heard of his going out there.

Q. Whom was Hunt with during these negotiations, Cunningham or Oliver?

A. So far as I saw, I should judge he was with one as much as the other. When I first came up with Haines, I went into Cunningham's office and found Oliver, Hunt, and Cunningham there.

Q. What part in these negotiations did Eschleman take, if any?

A. I do not know that he ever said a word.

Q. Was there ever any agreement between your firm and Oliver as to their taking his liability under this mortgage?

A. No, sir.

Cross-examination:

Q. What was the object of your going to Ossineke in 1868?

A. I went up there to see if he was going to fulfill his agreement to send us lumber.

Q. What date?

A. About the 1st of July, 1868. It might have been in 1867. I think the first time I was up there. Oliver himself was in possession of it.

Q. That was in 1867; when you were there in June, 1868, who was in possession?

A. I think Oliver and Robinson.

Q. Did you see Oliver there at that time?

A. Yes, sir.

Q. Who else did you see?

3311 I think I saw Robinson there then—George. I do not remember seeing the old man.

Q. With whom did you have any business interviews when you were there the first time?

A. I must have been there in 1867, because the first time I went up I remember we were very anxious about our lumber; we were very anxious about having it come forward.

Q. Are you certain you saw Oliver there in 1868?

A. I think I saw him there at the time.

Q. Who went up with you at that time?

A. I think that Mr. Haines went up with me, and also Albert Haines, his son.

Q. Before going up there had you seen George Hawkins in Buffalo or Lockport? He had come down with a proposition for the purchase *for* the property?

A. Yes, sir; I saw him.

Q. Was it in consequence of that interview that you had with George Hawkins that you went up there?

A. I think at that time it was. It seems to me I saw a letter of Oliver's.

Q. Was that letter addressed to you, or to Hunt and Cunningham?

A. I do not remember. I think there was a letter to us.

Q. Did you also see that letter; was it shown to you by Hawkins at that time?

"Exhibit F."

A. It is my impression that this is the instrument that Hawkins showed me when he came down.

3312 Q. Did you at that time, or later, perhaps in August, employ a man by the name of Johnson, of Saginaw, to go over the property and make an estimate of the standing timber?

A. Yes, sir.

Q. How many acres did he estimate?

Objected to as incompetent.

Q. What report did he make to you?

A. He made an unfavorable report.

Q. Can you tell what it was?

Objected to.

A. I remember he said he did not think there was fifty million of pine on it.

Q. With what view did you send Johnson there?

A. To look over the property, to make an estimate.

Q. Was that preliminary to negotiate for a purchase?

A. Oliver agreed to get us the refusal of the property for paying the debts and $10,000, and we refused, after receiving that statement.

Q. When Hawkins showed you "Exhibit F," did you talk with Cunningham or Hunt or any person about the proposal made here?

A. He came to us at Lockport. We were in Lockport then. I do not remember having any talk with them.

Q. Did you ever hear Cunningham or Hunt refer to this paper?

A. No; I do not remember hearing him.

Q. Did anybody else look this paper over with you?

A. I think Haines and I. I won't be sure that Haines did at all. I know that I looked it over. I won't say that Haines had at all.

3313 Q. When Cunningham went up there in the fall of 1868 and took a deed from Oliver of the real property and a bill of sale of the personal property, were you aware of the fact that he was going up?

A. No, sir.

Q. When did you ascertain that he had been up, and what he had done when he was there?

A. I think after he got back here and wanted to make a sale to us.

Q. How soon after he returned?

A. I think it must have been in September.

Q. When he wanted to sell the property to you, do you remember what statement he made?

A. That the property was for sale.

Q. What did he say—I have been up there and I have done so and so?

A. No; he never made any statement of what he had done.

Q. He told you he had been up there?

A. I do not know that he told me he had been up there. I think I heard that from Robinson.

Q. Which one?

A. George. I think he wrote to us that Cunningham had been there about the middle of September.

Q. Did Geo. Robinson, in that letter, make any proposition to you to buy the property?

A. I think not.

Q. Had you and he had any negotiation about buying Oliver's interest before that time?

A. No, sir.

3314 Q. Did you, at any time, telegraph to George Robinson, or he to you, with regard to the matter of the sale?

A. I do not remember that I did?

Q. Did you telegraph from Lockport to George Robinson: "Oliver will sell as we talked; meet us here"?

A. We had this agreement that we backed out of. Before that we had a talk about buying the property. Robinson, C. Haines & Co. had a talk of buying that property then. I do not know that we telegraphed; I do not remember any telegraph.

Q. How soon after Cunningham made the proposal to you did you see Oliver on the subject?

A. I think it was in the last two weeks of September.

Q. Did you see Oliver and Cunningham together?

A. Yes, sir.

Q. I mean before the Buffalo agreement?

A. I think we came up the last week in September, and we had a week or ten days before the agreement. I think I came up once; I won't be sure. I do not think I came up to see Cunningham before. We came up during this general conference about the property. I do not think I saw him before. I think he wrote us before.

Q. Did you understand the relation then existing between Cunningham and Oliver, at the time Cunningham proposed to you to buy the property?

A. I think we understood that he had a title to the property.

Q. You say you always understood that you were not to be crowded on the Hunt and Eschleman mortgage, and that they would get their pay. What do you mean by that? I do not ex-
3315 actly understand that. Do you mean that the purchasers expected to pay that mortgage and that the mortgagees expected to receive their pay from the purchasers?

A. Yes, sir; we expected the property was good for it; they were going to get their pay for it.

Q. That is not exactly the same thing.

A. We never agreed to pay that, mind you. We bought the property subject to these claims.

Q. But you say, also, you never agreed to pay any claims?

A. We never agreed to pay any mortgages upon it.

Q. But only took it subject to the claims?

A. Yes, sir; all the property subject to the claims.

Q. How do you understand this language in the Buffalo agreement? Near the bottom of page 1 it says, "and is to be subject to the following claims." Then on page 2, near the bottom, it says, "said parties of the second part agree to take said property subject to the above claims, and hereby agree to assume and pay, at the time of the conveyance of said Cunningham, one-half part," and so on.

A. That is in payment for the purchase, not in payment of the mortgage.

Q. You do not understand, then, that you assumed to pay any of those mortgages?

A. No; we took the property subject to those mortgages.

Q. What did you understand by the taking of the property subject to claims?

3316 A. We buy the property subject to those claims. If a man buys a house with a mortgage on it, if he forecloses on it we will have to lose the house.

Q. Is not your understanding that when you buy property subject to claims that you pay those claims?

A. I do not understand it so, unless we want to. If we want to, of course we can.

Q. Did you take counsel upon that subject at the time?

A. No, sir; took no counsel but common sense.

Q. But common sense is not always law, unfortunately. Do you know whether Cunningham with regard to it?

A. No, sir; I do not know that he did.

Q. Were any of the earnings of the property after you received the quit-claim deed from Cunningham ever applied to the payment of the interest or principal of any of these incumbrances?

A. No, we have not used any of the earnings of the Company to pay these.

Q. What have you done with the earnings?

A. What money we have had in I have drawn out; some for my living expenses. I have drawn out about $1,300 this last year.

Q. I do not mean the general earnings of the company from other sources; I mean the proceeds of the Devil river property.

A. We have expended the earnings, and more than the earnings, on the property.

Q. When you expended the earnings on the property, did you expect that this mortgage would be foreclosed and sweep away those earnings so spent?

3317 A. I expected the mortgage would be foreclosed.

Q. The result would be that you would lose whatever you spent upon the property?

Q. We might have to bid on the mortgage.

Q. Is not there an understanding between you and the mortgagees that the property shall be foreclosed, to enable you to bid in under that mortgage and perfect your title; is not that the object of this foreclosure at the present time?

A. No, sir.

Q. Will you swear that there is no such understanding as that between Cunningham and the mortgagees?

A. I do not know that there is.

Q. It would be a very easy way to make your title straight?

A. Yes, sir.

Q. What is the reason that you have not applied any earnings to keep down the interest, but have allowed the interest to pile up?

A. We have had to make improvements upon the property to keep the thing going.

Q. You say that the Buffalo agreement differed in no respect from the stipulations; were you present all the time at the meeting in Cunningham's office prior to the Buffalo agreement?

A. I think I was there all the while when they had any talk on the subject.

Q. Were you present all the time in Williams' office?

A. I think I was.

Q. You think that agreement was signed in the evening?

3318 I think it was signed in the afternoon.

Q. About what time in the morning did the meeting at Cunningham's office begin?

A. I do not know.

Q. Do you know whether Hunt and Eschleman were sent out for to come in and attend that meeting?

A. No, sir; I do not.

Q. Did you not expect when you made the negotiation, that anything you might make out of the property would depend upon your having a good understanding with Hunt and Eschleman with regard to the foreclosure of their mortgage?

A. No.

Q. Suppose they immediately foreclosed; suppose they had commenced immediately to foreclose upon your making the purchase, would you have no opportunity to make anything out of the property or do anything with it?

A. We might have raised money to pay it; it takes some little before a man can foreclose a thing.

Q. You transferred the Hawkins mortgage to Hunt, did you not?

A. I did not hold that mortgage; it was held by Haines.

Q. Did he receive any consideration for the transfer?

A. I do not know that he did.

Q. Do you not know that he did not receive any?

A. I do not know that he did not. I think he did not, though.

Q. What was the object of that transfer, do you know?

3319 A. Hawkins requested it. It was his own proposition.

Q. That was the second of October, was it not?

A. I do not know that it was; you have got mixed on the mortgages. I think we had a year. It was the 7th of September.

Q. Did you and Haines assign to Hunt and Eschleman the mortgage made by Oliver to you?

A. Yes, sir.

Q. Was there any consideration of that?

A. I think not.

Q. What was the reason of that?

A. As I have answered, for the reason that we were about buying the property, and we wanted that merged in.

Q. Do you know whether Cunningham went into possession of the property up there at Ossineke; do you know, from any statement of his, whether he entered into possession of the property at Ossineke at the time he took the transfer from Oliver?

A. No; I do not know that he went into possession of it.

Q. Your firm are in possession, are they?

A. Yes, sir.

Q. When did you first enter into possession, and in what manner?

A. We took the deeds of it.

Q. A man may take the deed of a house and lot and not move

into it. When did you take possession, and how did you take possession of this property?

A. I did not go up and look at it after we had it. We held the deeds for it, sent up and had them recorded, and Robinson
3320 was up there. I suppose he took possession of it; he was there.

Q. Was not Cunningham in possession. Did not he claim to be in possession at the time the sale was made to you?

A. No, sir.

Q. Was not he running?

A. Not that I knew of.

Q. Do you know whether he was, or not?

A. I do not know whether he was, or was not.

Q. What did he claim with reference to it?

A. I do not know that he claimed anything.

Q. Will you produce the articles of copartnership, between you and Cunningham and Haines and Robinson, or a copy of them; are you willing to have a copy made, or produce the original, so that we can see it?

A. I do not know where the original is.

Q. Do those articles contain a statement or inventory of the property, and a statement of the capital put in by each member?

A. I think not.

Q. Do they contain a statement of the liabilities to be paid off or assumed by Cunningham, Robinson, Haines & Co.?

A. I think not.

Q. Do they contain anything in relation to these incumbrances upon this property?

A. I think not.

Q. What did Cunningham put into that partnership?

A. I do not know how much he has put in.

Q. What did he agree to put in, when you let him in?

3321 A. I do not know that he agreed to put anything in.

Q. You do not mean to say that you let him in without putting in anything or agreeing to put anything in.

A. I do not know that there was anything agreed to be put in.

Q. Do you testify that Cunningham was admitted by you into your partnership, without putting in any capital or agreeing to put in any capital?

A. Haines had the part to do with a partner; I did not have anything to do with it. I did not know that he was going in, until he was in.

Q. Still you had your say about it?

A. I did not have a word to say about it.

Q. You would not be likely to take a partner in without knowing about the arrangement?

A. I never knew anything about the arrangement.

Q. You do not know what the arrangement is?

A. I do not know that we have any arrangement about the capital.

Q. I ask you again, do you testify that Cunningham was admit-

ted, a member in your firm, without putting any capital in, and without agreeing to put any in?

A. He has got some money in the company. I did not have anything to do with taking in Cunningham as a partner.

Q. When he came in, did he buy an interest in this Devil river property himself, or did he put in money for any interest in the Devil river lands?

A. He has put in moneys.

Q. Did you convey to him, by deed or agreement or
3322 writing of any kind, any portion of the Devil river lands, formerly belonging to Oliver?

A. I think not; I think we never made a deed.

Q. You think the title stands just as it did before?

A. Yes, sir.

Q. Are you willing to furnish a copy of articles of copartnership?

A. I have not one; I cannot get one that I know of; I do not know where the original is.

Q. Are you willing to produce the books which were opened at the time Cunningham, Robinson, Haines & Co.'s partnership was formed and in January, 1869, and let us look at them?

A. I do not consider myself an important member of this firm; if any of the rest of the company is willing, I am.

Q. Do you know from any statement of Geo. Robinson and Cunningham that a negotiation commenced between Geo. Robinson and Cunningham about forming this partnership, which was limited, formed in January, 1869, from the last of June, 1868?

A. No, sir.

Q. Have you ever heard any of them say anything about that?

A. No, sir; I never knew there was any agreement; I never knew there was anything said about it; I never knew there was anything.

Q. How soon did you have personal knowledge of the fact that Cunningham was going into the concern; you say the negotiations were conducted by Haines, looking to Cunningham's going into the firm?

3323 A. I did not know that he was going to be a member of the firm until he was a member of the firm.

Q. Why were not you consulted on the subject?

A. I do not know.

Q. Did you think you were treated rightly?

A. Yes; I was willing he should come in and put the shoulder to the wheel; I knew Cunningham before; knew of him; knew his reputation.

Q. How long had Cunningham been in the firm before you found it out?

A. I do not think it is over a week.

Q. Were any articles of copartnership ever made and signed by Cunningham, Robinson, Haines & Co.; did you ever sign any?

A. No.

Q. Did Cunningham ever sign any articles of copartnership at all, to your knowledge, or Robinson or Haines?

A. Our firm was C. Haines & Co.; we went in as a firm into this firm.

Q. The firm of C. Haines & Co. is the partner in the concern of Cunningham, Robinson, Haines & Co.?

A. They were, although, now, since, I believe, Haines and I made a sort of settlement; I do not know whether it affects this company or not; we divided the money ourselves.

Q. Are there any existing articles of copartnership signed by you four or not—Cunningham, Robinson, Haines & Co.?

3324 A. No, sir; not that are signed by each one of us; I have seen a copy of one between Cunningham, Robinson, C. Haines & Co.

Q. Did you sign it C. Haines & Co., or did Haines?

A. Mr. Haines.

Q. Do you know when Cunningham signed that?

A. No, sir.

Q. At the time of these negotiations were articles of copartnership formed between Robinson, Haines, and Ranney?

A. No, sir.

Q. Were articles of copartnership formed between Robinson, Haines, and Ranney before Cunningham was let into the firm?

A. No; no articles drawn up.

Q. Then the first articles of copartnership which were drawn up were those to which Cunningham's signature was affixed signed Cunningham, Robinson, C. Haines & Co.?

A. I think these are the first. We never had any articles written out before that—before we took in Cunningham. I don't remember writing any; Haines might.

Redirect examination:

Q. Mr. Russell asks you with reference to the agreement at Lockport, was that agreement put in writing?

A. Yes, sir.

Q. C. and G. R. Haines, C. Haines & Co., and George Robinson?

A. Yes, sir.

Q. Were there two at Lockport?

A. I do not remember but one.

3325 Q. Was George Robinson down here in July, 1868?

A. I do not remember the date.

Q. The agreement that you speak of in which the parties who bought were to pay Oliver the ten thousand dollars?

A. Yes, sir; and pay the debts of the company.

Q. Was that agreement reduced to writing at Lockport?

A. Yes, sir.

Q. By whom?

A. I think by Oliver himself.

Q. Is that the paper? Run through that and see if there was another agreement in which George Robinson was a party besides that one.

A. This is the agreement made by G. R. Haines and us to buy this property. George J. Robinson was there as a witness.

Q. Do you know Oliver's handwriting?
A. I do.
Q. Will you state whether that is Oliver's handwriting?
A. That is his handwriting.

Paper marked "Exhibit R."

Q. Will you state whether prior to the execution of this agreement the parties called at Hunt's; have you any recollection of calling there?
A. I think they did; I do not know that they all did; I know I remember going out there once or twice, but I do not remember whether it was about this agreement or not.
3326 Q. Was there any reason for not carrying that out besides the one you have stated—Johnson's examination?
A. I do not know of any, except that we did not consider the property worth it.
Q. Was there any refusal by you to retain the $20,000 mortgage of Robinson's; was there any talk of that agreement between you and Oliver about the $20,000 mortgage of Robinson's?
A. I do not remember of any talk; maybe there was something said about that, too.
Q. Do you recollect that Oliver and you differed as to the terms on which you purchased?
A. No, sir; that was all right; the reason we didn't take it was because we were not satisfied with the property—didn't consider it worth that.
Q. You say there were no articles of copartnership drawn up between Robinson, C. Haines, and yourself prior to Cunningham's coming in?
A. I do not remember any writings being drawn up at all.
Q. Did you do any business at all looking toward active operations until Cunningham came in?
A. Oh, yes. We bought our supplies and we advanced money, accepting drafts on us, Geo. Robinson drawing on us right away. They came along right lively; we accepted them at Lockport.
Q. How long after you formed this copartnership of Robinson, Haines & Co. was it before you gave up the idea that Oliver would be able to sell to some one else and let you out?
3327 A. We waited 30 days. We kept close track of our supplies for 30 days. I suppose if any one bought it they would have to pay this back. We went on for another month; gave him the privilege to take it and stood ready, I guess, for six months after that; until Cunningham went in, anyway.
Q. During this time did you look upon that firm as really established and intending to carry on a fixed business?
A. Yes, sir; we expected to carry it on, unless we could get parties that would buy it.
Q. Were you expecting him to get parties to buy it?
A. For thirty days; he tried so often that we began to be discouraged.

PHILIP M. RANNEY.

Sworn and subscribed before me, this 30th day of August, 1871.

JAMES SHELDON,
United States Commissioner.

WM. F. WHEELER sworn for defendant:

I am sixty years old. I reside at Portville, in Cataraugus county, New York. I am in the lumber business and have been so engaged since I was twenty-one. I am a manufacturer of lumber; I
3328 have owned pine lands since '34. I have not examined them so extensively as a great many men. I have owned lands and had to look at them. I know a piece of good land when I see it. I know Mr. Oliver. I have known him not quite three years. I first saw him at Alpena, Mich. I got off a steamboat at Alpena, and Mr. Oliver was pointed out to me, and I think he was introduced to me, and I saw him at his property the next day or the day after; that was, I think, in 1868. I know it was the fall Grant was elected President. I did not go for the purpose of seeing Oliver.

Q. Did you have any talk with him about the purchase of his property?

A. I did; he told me what it could be had for.

Q. Do you recollect what he told you it could be had for?

A. I can recollect very nearly.

Q. Give us the price, if you can?

Objected to as irrelevant and incompetent.

A. $115,000.

Q. If you please, will you give us the details of that price?

A. I cannot give you the details; I have no details about it. He showed me a list of the claims against the property.

Q. Do you think you would recognize them if you saw them again?

A. I did not fix it very much in my mind.

Q. (Presents list contained in the Buffalo agreement.) Look at that list.

3329 A. I do not like to try to remember these amounts; I had them down in my memorandum book. I never could have repeated them. I cannot say that I recollect. I know there were some very large claims, and against men whose names I had heard very often.

Q. Was any money to be paid under these propositions, except in payment of the indebtedness—claims against the property?

A. No, sir.

Q. Did Oliver know you were coming up there?

A. I do not know that he did; I did not know it myself. I was going off through the country to see what we could find.

Q. Did he send any one to meet you?

A. There was some one came to meet me; I cannot say that he sent him.

Q. What was his name?

A. I think his name was Thurber. I had never seen him before. He met me at Alpena. I cannot tell what Thurber's business was.

I do not know anything about him. He professed to have been looking lands. He said he had looked over Oliver's lands. He had a memoranda with reference to them.

Q. What was that memoranda?

A. He showed me a map of the lands and an estimate of the lumber upon the lands.

Q. Did you go over the property with Oliver?

A. We went over some, for the time we were there.

Q. Will you tell me, as near as you can, what conversation you had with Oliver, in looking over the property, with reference to its value, and what you talked about?

3330 A. Oliver went with us and showed us over a good deal of the lands. Thurber went with us, also. My son was along, and also a Mr. Colville.

Q. How did the land appear?

A. Some of it was very good, very well timbered, and some of it not much timber on it; I was looking for fine timber.

Q. Did you ask Oliver to show you any particular part of the lands?

A. I wanted him to show as good as there was.

Q. Did he attempt to?

A. I suppose he would; it would be natural that he would; I told him when we were going through a part of it, when we came along on the lines, there did not seem to be any timber; he said there was timber off a little distance from the lines, but we did not go where it was; perhaps he could have taken us to better timber.

Q. What did he say? Did he say he showed as good as there was?

A. I do not think he did. I do not know that in all cases he said he used some part of it. He told me he could have shown us better timber than where we were going.

Q. Did you compare your own examination of the lands with Mr. Thurber's estimate at all?

A. I did not make any figures. I did in my memory.

Q. Did you say anything about it to Oliver?

A. I told Oliver when he came out at night from what I had seen of the property I was not prepared to consider it safe to buy it at that price. I did not consider there was timber enough on it to justify the purchase of it, unless I could see a great deal better than we had seen.

3331 Q. Did you say anything to him about Thurber's estimates from the way the land looked?

A. Yes, sir.

Q. What did you say?

Objected to unless Thurber's estimate is produced.

Q. Did Thurber give you that estimate?

A. He made a map of the entire property, and I showed him those estimates I had to look at.

Q. Did you retain it?

A. I gave it back to Thurber again.

Q. If you said anything to Oliver about Thurber's estimates and your own examination, state what you did say to him and what he said to you about it.

Objected to.

A. I inquired of Oliver if he thought the estimates we had were safe and reliable, and he said they were correct. Those were taken from his own estimates.

Q. How did they tally with your own land estimate?

A. What I saw I did not consider that it came up to Thurber's estimate.

Q. What did Thurber say to you when he first met you?

Objected to—statement of Thurber.

Q. With reference to any business between him and you?

A. He told me he had been on the property a good many days and had looked it over; it was splendid property, and that we ought to be sure to buy it, and ought to be very careful, for
3332 there were others that wanted it. That was the first [time] I saw him. I did not know anything about him before.

Q. Did he tell you who had sent him there?

A. He told me Mr. Weston had sent him up there.

Q. Where was Thurber stopping while he was there; do you know?

A. I do not know where he stopped, but he went with me down to Harrisville and there we stopped in a little tavern.

Q. At Ossineke, was he stopping with Oliver?

A. I could not say.

Q. Do you know whether he was in Oliver's employ?

A. No; I do not.

Q. Were he and Oliver much together?

A. Not that I know of.

Q. Do you know whether Thurber was actually on these lands sixteen days or not?

A. No, sir; I do not know anything about it. He told me he had been a good many days, and was then in the woods.

Q. You say Oliver told you those were right because they were his estimates?

A. Yes, sir.

Q. Did he say anything further about that; how Thurber came to have them?

A. I think he told me he gave Thurber the estimates himself.

Q. At that time what did you conclude about the property and its value?

3333 A. I could not tell more than this. From what I had seen of it I did not dare to buy it at that price. I did not consider it safe to buy it at that price. I would not consider it a safe investment from what I had seen of it; yet I did not. It might be better if I was to see it more.

Q. How long were you there?

A. I got there in the forenoon. We went down from Alpena, I

think, about eleven o'clock the first day; spent that day and the next day there.

Q. Did you look at the improvements on it at all?

A. Yes, sir; we went through the mill and saw all the improvements they had.

Q. Will you give me your estimation of the value of the mill and those improvements, giving the mill separate in the first place; that water mill, did you see it?

A. I did.

Q. What, in your judgment, was that worth?

A. I would rather not set a price on these mills in Michigan. If you want to know what I thought of the water mill, I do not think it was worth anything; but the other mill is a pretty extensive mill and cost a good deal of money, and I do not know how much it was worth.

Q. In what condition was the steam mill?

A. The steam mill seemed to be pretty sound. It was not entirely complete. There was a good deal had been done there. I could say they had been to a good deal of expense in building the mill good and strong.

Q. Could you form an idea how much more money it would require to put the mill in working order?

A. I could not say.

Q. It all needed further expense?

A. Yes, sir; I think so.

3334 Q. What machinery was in it, do you recollect, for cutting?

A. It was a circular mill, intended to be a gang some day, and fitted for logs; there was no gang in it; I do not think all the boilers were in it that it was planned for; it was planned on a large scale; I thought it could be made a very good mill. That is all I looked at about it. I did not figure up to see what the mill was worth and how much it would cost. The dock was built of slabs, principally; I could not put a value upon the dock; I do not know anything about the situation of the property.

Q. From your examination of the pine lands, what would you say as to their value per acre, in your judgment?

A. I do not want to place a valuation upon these pine lands; I simply say that I did not consider the property, from what I had seen of it, I did not consider it a good investment, without it prove to be better than what we already saw I think to estimate pine lands up there, you ought to take a Michigan lumberman, not a New Yorker.

Q. You do not know what they were selling lands for up there, lands before sold?

A. At all sorts of prices; Weston had bought lands at $10 an acre, not a great ways from there, and there had been other lands sold for less than five, I heard.

Q. Did Oliver afterwards see you about this?

A. Yes, sir; he did.

Q. When was that?

Q. It was some time in November of the same year.

3335 Q. Where did he see you?

A. In my house; it was before election, I think; he came down there to see me; he told me that the time had been extended a few days, and that we still might have a chance to buy that property.

Q. What did he tell you about what it could be got for then, if anything?

A. The same price. He came to give me more time to loook at it; I had said from what I had seen of it I would not dare to buy it, and would not consider it safe; he came to let me know that there was time to see it, or make some arrangement to buy it. I knew that he could not give me as much time as we wanted to go and look at it, if I was going to do it.

Q. Did he say anything about the arrangement in Buffalo?

A. Yes, sir; he said we could have the property; that he had the time extended a few days; I do not know that he said anything about selling it to any parties here; he told me we could have it; I think he found that so when we got here; I came back here; after Mr. Oliver left me, I had no expectation of ever doing anything more about that property. I received a letter soon from Mr. Weston, asking me to meet him here with Oliver, with reference to this property, and I came, because I thought, perhaps, Weston knew something about it. When I came here Weston came very soon, and Oliver got several of these gentlemen together, Hunt, Haines, Cunningham, and Robinson; I do not know that there were any more; they all of them seemed to be willing that

3336 we should have the property. Hunt expressed himself quite anxious that we should buy it; we did not buy it.

Q. Can you recollect on what terms you were to have the property at this time at Buffalo?

A. Those who held the claims against it with him, they said they would give us any time we wished—the same price—to take off the claims that they had against it; no money to be paid outside of the claims.

Q. Did you learn of this agreement with Haines, Ranney, and Robinson?

A. They so informed me; I knew nothing about it.

Q. Did they say to you whether the terms to you were different from the terms they were to get it on?

A. They were about the same, as I understood it.

Q. Did you conclude to take it?

A. We did not. Weston had not seen the property. He said if I had seen it enough so that I considered it a good thing he would go in with me and buy it. I told him I had not.

Q. Did you have any talk with Oliver about the Buffalo people taking it instead of you?

A. No further than as to why it would not be as well to let them take it. He said he would rather we were to take it. He did not seem to be satisfied with the treatment he had; he carried that impression to me.

Q. Did he claim to you anything about any misunderstanding as to the terms on which they were to take it?

Objected to as leading.

Q. Did all the parties seem to agree on the terms; did there seem to be any dispute?

3337 A. There was not any when we were here; I did not know of any dispute; I did not discover any.

Q. Did you talk with Oliver himself personally about it?

A. Oliver was very anxious we should have the property, and whenever we got a chance to talk we did talk. He seemed to be very anxious. I could not say what advantage it would be to him to let us have it; I suppose there was a reason. I do not recollect any very special conversation with him.

Q. You say Hunt seemed to be anxious for you to have it. How did he exhibit that interest?

A. Hunt told me he would give me $500, and we could have any time we wanted if we were to buy it. He said he would cut down his claim $500, and would give as long time as we pleased; we could have our own time. I said I did not discover any reason why Oliver should prefer our having the property. I got an impression there was some personal property not included that he could hold if he sold it. I do not know that there was any talk about that, but I got that impression; suppose there was.

Q. Is that memorandum-book lost?

A. I have not got it here.

Q. You say this was in November that Oliver came to see you. Do you recollect how late in November you were here in Buffalo?

A. I cannot tell you.

Q. Was it after election?

A. It seems to me it was.

Q. Do you know how long after?

3338 A. I know I told him I could not be away until after election. I do not think I would have come up here. I think it must have been after election. I have no memorandum of it.

Cross-examination:

Q. You thought the personal property was not included in this proposition of sale?

A. The claims against the property seemed to be against the real estate, so far as I had any knowledge. I could not see anything else.

Q. You understood it was only the real property which was offered you for sale, so that in case the property was sold Oliver would have the advantage of keeping personal property?

A. I got that impression some way. I suppose that was all there was of it.

Q. Because all his debts would be paid by the real property; that was the understanding, was it?

A. I did not see any claims against the real property. Under the proposition as made we were to pay for the real estate by assuming and paying the amounts of all the mortgages, including the Cun-

ningham, Hunt, and Eschleman mortgages. We were to pay just the amount of the purchases.

Q. Were you not to pay them off, so as to release Oliver from any indebtedness or any liability?

A. Take the property and pay the debts that were shown us.

Q. That was to be in that way, so as to relieve Oliver from any indebtedness whatever?

3339 A. I do not know anything about that; only I know that these claims that they showed us they said would buy the property. I had no means of knowing anything about any other indebtedness.

Q. The point is this: Were you to relieve Oliver from those claims upon the property which were showed you, and if you had purchased would you have purchased upon those conditions?

A. We would have purchased by paying the amount that he had made up in those different claims; we were to purchase by paying the amount which he made up of those different claims in such a way as to indemnify and guarantee him against those claims. When we came here and found these gentlemen their proposition was that we should pay them or secure them to them.

Q. Hunt's proposition was that you should pay them up or secure them to them?

A. Pay them up or assume them, I suppose.

Q. Then, according to the talk which was had in Buffalo in November, you were to assume the debts and become the debtors of Hunt and Eschleman?

A. When we were in Buffalo we were offered the property at just what Oliver had engaged to let them have it at before they bought, in any way that we were a mind to fix it.

Q. And, as a part of that proposition, were not you to become the debtors of Hunt and Eschleman?

A. We were to fix it as the parties saw fit to fix it between them; if they saw fit to give us time they could do it. We concluded to pay them the money.

3340 Q. They were to become your creditors, and cease to be creditors of Oliver, and you were to become their debtors, and Oliver cease to be their debtor?

A. I am not prepared to say that Oliver ceased to be their debtor.

Q. How did you understand it?

A. I understand that they offered us the property at just the price they were to have it from Oliver; so Weston and I both understood it, and if we could make any arrangement about the time we had the privilege to do it.

Q. Did you understand from Hunt, at that time, that he was ready to relieve Oliver from personal liability and take you as his debtor, or you and Weston?

A. So far as the claim is concerned, so far as these claims that he showed us.

Q. You did so understand it?

A. I have a right to understand it so; there is nothing especial

about it that I know of. Hunt offered to throw off five hundred dollars.

Q. And take you as debtors?

A. I suppose so; I do not know how we could buy it in any other way; take us as his debtor for the money.

Q. You do not suppose that Oliver was going to part with $115,000 worth of property and yet remain personally liable to pay these debts that were shown you?

A. I supposed that the debts that they presented to us were the amount against that property, and if we paid them up we had it.

Q. Suppose you did not pay them up immediately, but took
3341 time to pay them, did you suppose that Oliver was at any time to be liable to pay those debts himself, although he had sold the property to you?

A. I would not be very likely to suppose so, if they told me that was the amount of the claim against the property, and we might have it for the claim.

Q. How much in value of the personal property did you judge there was there; did you form an estimate as to that?

A. I did not see the personal property; there were some boards.

Q. How many acres of land were you enabled to examine during the day and a half you were there?

A. We went over a good deal of land.

Q. Did you go over 2,500 acres?

A. Yes, sir.

Q. How many should you say—3,000?

A. We began in the morning before daylight, and did not go in until after dark.

Q. You arrived at 11 o'clock Monday, and remained that day and the next day?

A. Yes, sir.

Q. It was a day and a half examination?

A. Yes, sir.

Redirect examination:

Q. Did you understand that this sale would pass to you; what logs and lumber had been cut up there, as well as standing timber?

A. No, sir.

3342 Q. Did you understand that there was any difference in that respect from what you were to buy and from what the Buffalo parties were to buy?

A. I could not tell how they stood about that. I supposed that they bought the real estate just as they offered it to us. We did not suppose we were buying personal property.

Q. You did not suppose there was any difference between what was offered to the Buffalo parties and what was offered to you?

A. No, sir; I did not.

Q. And you got the impression that personal property did not pass?

A. Because we did not talk about personal property. I could not

see any other way. It was real estate we talked about, not personal.

Q. Were you not expecting, as you understood it, you would be personally liable to Hunt and Eschleman and those claims for all of their debts in case they exceeded what the property should bring, or whether you only took it subject to those claims which you were at liberty to pay off or not, as you should deem best after coming on the property? In other words, whether you were to agree that Hunt and Eschleman and these parties personally on your own side that you were to pay these claims irrespective of the property?

A. The way I looked at it, I supposed these different amounts were mortgages principally, and if we took the property we were to have, to my knowledge, those claims by paying them off—becoming responsible.

Q. Were you, or were you not, to have the option to let the
3343 property go for the incumbrances in case you saw fit, or were you bound to pay them at all events, no matter what the property might bring?

A. If we bought at all we expected to buy it because it was worth more. We were not to let the property go.

Q. But in case it should turn out to be worth less, under your understanding would you be bound to pay the claims anyway, or had you not the option to let the property go, and pay them that way?

Mr. RUSSELL: And leave Oliver liable to pay the balance, do you mean?

Mr. DUFFIELD: Yes.

A. All I know is that it was a good deal of mortgages to pay on that; a good many mortgages that had to be paid, and we figured it up at $115,000, and they said, "Now, if you will pay $115,000 you can have this property."

Q. Did they ask you to apply this to pay those, or might you not have the option to let the property pay it in case you abandoned it?

A. I do not know but it would work that way, but we had not thought of that kind; we never thought of abandoning it.

Q. Mr. RUSSELL: Were you to pay the mortgages—$115,000—instead of Oliver?

A. I suppose so. I had no other idea than to pay the $115,000.

Q. Was that their proposition to you?

A. They would release us from any amount that they saw fit, as Hunt offered to do.

3344 Q. Did you understand that the proposition was that absolutely, or that you could take a deed to this property subject to these claims?

A. We did not think of taking a deed subject to these claims.

Q. Did you see the Buffalo agreement when you were here?

A. No, sir. They all seemed anxious to have us take the property except one man, Robinson; he said he would, only he had gone up there, and he didn't like to come away. He did not seriously object to it. I mean the young Robinson.

Q. Did he offer any obstacle at all?

A. Nothing, only he said he had gone up there and did not like to back out. He would like to go on and do something.

Q. But he was willing?

A. He consented to it.

WILLIAM F. WHEELER.

Subscribed and sworn to before me, this 30th day of August, 1871.

JAMES SHELDON,
United States Commissioner.

3345 BENJAMIN A. WILLIAMS sworn for defendant:

I reside in Buffalo. I am 40 years old. I am a lawyer by profession, and am at present city attorney, which office I have held since the first Monday of January, 1870. I am acquainted with all the parties to this suit.

Q. Did you draw any papers between Oliver and the other parties to this suit at different times?

A. I think I did.

Q. Will you look at this paper, "Exhibit B?"

A. That is in my handwriting. I signed it as subscriber and witness. I saw Mr. Cunningham sign it in my presence. I have no doubt it was executed on the day it bears date. The parties present were Cunningham, Barton, and myself. It was drawn in my office at Buffalo.

Q. Have you any way of fixing the date to that paper other than the paper itself?

A. No, sir; except that I think it was on the day he started for Alpena; that is, he informed me he was on his way there to make some arrangements with Oliver. I think he said he was going to the cars at that time. I do not know the fact that he going, except what he stated to me when he came in. I took the acknowledgment to the paper.

3346 Q. Have you any recollection of any different date being given to the instrument than the actual day on which it was executed?

A. No, sir.

Q. Look at this paper—the Buffalo agreement. In whose handwriting is that agreement?

A. The first part is in the handwriting of Mr. Barton, a clerk in my office; the first four pages, and the balance is in my handwriting.

Q. Explain how that came to be in two hands.

A. I drafted the agreement and placed it in the hands of Mr. Barton to be copied. Some of the parties were very anxious to leave at once on some train—I do not recollect which—and it was ascertained that Mr. Barton could not copy it in time to allow it to be signed. I took the latter part of it and copied that myself, leaving Mr. Barton to copy the forepart. We both worked at it, copying the draft in order to finish the copy in time to have it signed.

Q. Will you state who was present in your office at the time that agreement was drawn?

A. These parties were present. Oliver was there during some of the time; that is my recollection of it.

Q. State whether the parties had arrived at an understanding when they came to your office, or whether there was any discussion between them at your office as to the terms of agreement?

A. My impression is that there was a discussion between them at my office, and they were there two or three days, off and on. My impression is that they were there at least two days, and I think longer.

Q. Did Oliver take part in the negotiations himself?

A. He was talking with the parties there in a different office. I I did not hear what was said. There was some talk in another room.

Q. Who gave you the instructions from which you prepared the agreement?

3347 A. I think I received it from these parties here. I cannot state it was from any one of them.

Q. Was Hawkins there?

A. I cannot state positively, but my impression is that he was there some while they were there; but whether he was there all the time or not I cannot state. My impression is that he was sent off. H. M. Robinson, I think, was there; he was not a party to this instrument.

Q. Do you recollect whether Hunt or Eschleman were there?

A. No; I do not. They might have been there. The agreement was read over after its execution. Before the matter was finally completed all its provisions, I think, were read over several times. The matter was very fully discussed and talked of by all.

Q. Do you know whether there was any change between the verbal arrangement and the written instrument?

A. There was no change between the verbal arrangement as communicated to me from time to time; that is, I drew it just as they requested me to draw it. I was only subscribing the witnesses; I saw the parties sign the paper; it was signed in my presence and in my office.

Q. Look at "Exhibit A."

A. That is in my handwriting.

Q. Can you tell any circumstances connected with the execution of that paper?

A. It was executed in my office by Oliver.

Q. Who requested it?

3348 A. It was a part of this arrangement.

Q. Was it before or after this you saw the agreement?

A. I should say it was while that was being drawn; perhaps this was executed first while that was being drawn; my impression is that Oliver was going away, and this was prepared as a part of this general arrangement, and he signed it before he went off.

Q. Do you know why he was requested to sign it, or why it was taken from him—did you hear the reason talked over there?

A. My impression is that it was talked over, this conveyance to Mr. Cunningham; there was a reservation of some lands, and that in

order to use this saw-mill and this river it was necessary to have a right to run logs through the lands that had been retained by Oliver, to enable these parties who would take this agreement from Cunningham to avail themselves fully of all the rights and privileges of this mill; that is my recollection in reference to it.

Q. Was that agreement to be confirmatory or connected with the other agreement in any way, as you understood it?

Objected to as leading.

A. It was connected with that in that way.

Q. You said that Oliver was going away, and you thought that was one reason why that paper was executed. Why did they want Oliver to execute any paper in addition to Cunningham's agreement?

A. It was thought that it was necessary to have Oliver execute his part of the paper in order to vest this new company with
3349 the same rights and interests which Oliver had not parted with in his conveyance to Cunningham, as I understood it.

Q. Was there anything said, and, if so, what, about Oliver's signing some paper recognizing and confirming an arrangement with the Buffalo parties?

Objected to as leading.

A. That I don't recollect.

Q. Wasn't that the object of that?

Objected as leading.

A. I do not recollect as to what appears here on the face of this instrument; as to that I recollect it was thought that Oliver had some interest there which it was necessary to obtain in addition to this that he had conveyed to Cunningham; among others was this right to run logs through the Devil river and over some lands that Oliver retained; I forget what lands these were.

Q. Do you recollect who were present when you drew that?

A. No; I presume these other parties were present; they were in my office nearly all the time for several days; I have not any doubt but what some or all of them were there.

Q. Did Mr. Oliver ever see this agreement? First, was he present when it was executed or when signed?

A. I do not think he was present when it was signed; I think he had gone away.

Q. Did he afterwards ever see it, to your knowledge?

A. I think he came in afterwards and brought the order that is attached to the paper, and the paper was shown; I cannot
3350 tell when that was; I think it was a week or two after the paper was drawn; it seems to me he had been off down east, and came back; I think he was shown the agreement upon that order; I cannot say that I have any distinct recollection about it; that is my impression; I do not recollect that he said anything to me about the agreement at that time, either expressed satisfaction or dissatisfaction.

Q. Would you have been likely to recollect if he had claimed it was not drawn as it was agreed to?

A. I think I should.

Q. It would throw an imputation upon you that you would be likely to recollect?

A. There was no claim that I drew other than what I was instructed. I do not think he said anything to me about it, either approving or disapproving. That is, I have no recollection that he did.

Q. Look at that deed. Were you present at the execution of that deed?

A. I was present at the execution by Mr. Oliver, not present at the execution of it by Mrs. Oliver. (Marked Exhibit "S.") I am subscribing witness of Oliver's signature. I saw him sign. It was in my office in Buffalo. I think it was on the day of the date of that. The deed is in my handwriting.

Q. Do you recollect the instructions in reference to the deed; who they came from and what they were?

A. I had instructions to draw this deed. It seems to me that Cunningham gave me the instructions. I do not know but Oliver;
3351 but Cunningham spoke to me about it. As to whether Oliver talked to me about it before it was drawn, I am not able to state.

Q. Do you recollect what was stated to be the reason that deed was given, if anything; what they wanted it for?

A. I understood it was to convey Oliver's remaining interest in these lands; if had any in these lands.

Q. Remaining after what?

A. After the execution of the deed to Cunningham.

Q. Whether or not it had any relation to the deed of Cunningham to Haines and Ranney?

A. It was intended to invest Robinson, Haines, and Ranney with any interest, if he had any, that Oliver might have in those lands. It cleaned up the matter so far as he was concerned, as I understood.

Q. Will you state if you mean whether that deed was executed by Oliver after presentation by you to him of this order and his seeing the agreement?

A. My impression would be that it was on the occasion of his presentation of that order on his visit to Buffalo. It was probably the same day. The same time that the deed was executed. He came in and handed me this order, which is from Cunningham.

A. If this deed was made at the time he looked at that agreement won't you try and recollect whether Cunningham was there or not? At the time he presented that order was Cunningham present?

A. I do not know.

Q. Would he be likely to be if he sent the written order?
3352 A. I should say not; if he came there himself his verbal order would be sufficient.

Q. You do not recollect, though, of this?

A. No; I do not recollect.

Cross-examination:

I have known Mr. Cunningham about ten years, I think; I have been his attorney between three and four years; I think the first business I did for him was during the year 1868.

Q. Had you been in the habit of transacting business as his attorney before the execution of this Buffalo agreement?

A. I do not recollect that I ever did anything for him; I think the first business that I ever did for him was in connection with these Oliver lands at the time of their sale from Cunningham, Hunt & Eschleman to Oliver; I do not recollect anything prior to that time; still there may have been some other matters.

Q. That was two or three years previous to this Buffalo agreement?

A. Perhaps it was.

Q. Have you ever transacted business for Hunt and Eschleman prior to this time?

A. I do not recollect anything except this Oliver matter.

Q. How happened Cunningham to state to you that he was about to start for Alpena that night to make an arrangement with Oliver; was it in connection with taking counsel in regard to the matter, or in what way did he happen to mention it?

3353 A. He had spoken to me before that he had been applied to by Oliver to take the conveyance of these lands; he had also said to me that Hunt and Eschleman talked of taking an assignment of this mortgage, and I had advised him previously that he had better make an assignment before he took the deed.

Q. How long before that do you think the consultation took place upon the subject?

A. I really cannot say; I should think it might have run through several weeks.

Q. Do you remember whether there had been some one consultation upon the subject?

A. I do not.

Q. I suppose in regard to the matter of dates, in respect to the instruments drafted by you several years ago, you are obliged to depend almost entirely upon the facts as they appear upon the face of the papers?

A. Unquestionably; I recollect that as plain as every part connected with the drafting of the instrument.

Q. Do you think the preparation of the instrument at your office occupied two or three days; do you remember whether Oliver left on the first of these two or three days?

A. No, sir; I do not.

Q. Do you remember at what time of day the parties came to your office in the first place?

A. I do not.

Q. Do you remember whether you received any instructions whatever from Oliver's own mouth, or whether some other person gave you instructions?

3354 A. I cannot say whether I received instructions from Oliver or not.

Q. Was the draft of the paper in the first place in pencil on different slips of paper, which were subject to alterations from time to time, as the discussion and consultation proceeded?

A. I think the draft was in ink. I think it was changed, interlined, and erasures were made; some of the sheets were rewritten. There was a good deal of preparation. At any rate the draft was not in a fit condition to be executed, and for that reason it had to be copied.

Q. Do you remember whether some of these erasures and interlineations and rewritten sheets was subsequent to the departure of Oliver?

A. No; I do not.

Q. Do you remember whether upon Oliver's return to Buffalo, after the agreement had been signed by Cunningham and the other parties, Oliver came to your office and desired to look at the agreement, and your telling him that he would be compelled to get an order to be allowed to see it?

A. It may be. I do not recollect that. I think very likely that I should have said so. Whether he did or not I cannot say. The fact that he brought an order would perhaps indicate that he had previously made a verbal application unsuccessfully. I do not say that I did deny Mr. Oliver his application, because I do not recollect about it. He might have applied to my clerk, and he may have had orders not to show papers to any person.

3355 Q. Do you remember receiving instructions from Cunningham, or any other person connected with the matter, not to allow the instrument to be perused by any person without a written order?

A. No; I do not.

Q. But the best you can say is, that your impression is that an application might have — made for leave to see the paper upon the part of Oliver?

A. It might have been. I have not any distinct recollection.

Redirect examination:

Q. You say it may have been two or three weeks before the execution of this instrument that Cunningham talked to you about going to Ossineke?

A. Yes, sir.

Q. You say that, because it is possible. Have you any distinct recollection?

A. I have not any recollection of the time. Whether it was one week, three weeks, a month, or six weeks, I would not state.

Q. It might have been two or three days, might it not?

A. Yes, sir; it might have been two or three months. I do not think it was as long as that.

Q. The fact of it is you do not recollect when it was?

A. No; except that it was before that time.

BENJAMIN H. WILLIAMS.

Subscribed and sworn before me this 31st day of August, 1871.
JAMES SHELDON,
United States Commissioner.

3356 OLIVER F. BARTON sworn for defendants.

I am 22 years old; I live in Buffalo; I am clerk in Mr. Williams' office; I am acquainted with Mr. Oliver and the defendants in the case; I have seen Mr. Hawkins in the office.

Q. Will you look at this paper, "Exhibit P?" Did you ever see that before?

A. Yes, sir. That is my signature as subscribing witness. I saw Mr. Cunningham sign his name to that paper. The only thing I recollect in connection with that is that Cunningham came in and said he was going up West to see his friends. I asked him who, and he said Oliver and Robinson. He said he was going that afternoon, and wanted to take the afternoon train.

Q. Can you connect the execution of that paper with anything you did that day, so as to fix the day on which it was executed?

A. No, sir; I know I was only as clerk in at Williams' office when the paper was executed. I saw Cunningham and Robinson.

Q. Did you sign this Buffalo agreement as a subscribing witness?

A. Yes, sir.

Q. State in whose handwriting that agreement is made.

3357 A. The first four pages are in my handwriting, and the last five in Williams'.

Q. Will you explain how it is that part is in your handwriting and part in Williams'?

A. Mr. Williams made a draft of the agreement as they dictated it to him, the different parties talking it over before him, and brought it out for me to copy. Mr. Ranney wanted to get off that afternoon on the four o'clock train for Lockport, and I think Haines wanted to go with him, and I had got pretty well along in the agreement and Williams said, "I will copy this last sheet and a half," and he took it off my desk and left me to finish what I had, and that is the way he copied the last part and I copied the first of the draft.

Q. Do you recollect that the two that he copied and what you copied were attached before they were signed?

A. Yes, sir; Williams attached it himself; I saw it.

Q. Did you ever see that order on the top of that?

A. Yes, sir. Oliver came into our office one morning with the order, and Williams handed it to me and asked me to get the agreement out of the safe. As I understood it, nobody was to see the agreement or have a copy without permission of the parties that signed it. I got the agreement out of the safe.

Q. Did he read it?

A. Yes, sir. He sat down at the end of my table and read it. I was at the table writing.

Q. Did he say anything during the reading or after he had read it one way or the other?

A. Not that I recollect of.

Q. Did you hear him say anything to Williams?

3358 A. Williams was not there when he got through; he had passed out.

Q. Did he make any demonstration upon reading that agreement one way or the other that you noticed?

A. Nothing to impress me at all.

Q. How long was Oliver in the office on the day he read that agreement?

A. I think he passed out after he read it; stood there long enough to read it; whether he came back I cannot say. I am under the impression that he came back in the afternoon.

Q. Do you recollect the discussion upon spiritualism that you and he had?

A. I cannot say whether that was the same day; I think it was, too. He went out and bought the Banner of Light and came into the office and sat down and read it quite a while.

Q. Did he have any papers with him, deeds, or anything of that kind on that day?

A. Not that I can say.

Q. After he brought in the Banner of Light how long was he there?

A. I could not say. I am under the impression that he was there most of the day.

Q. Did he see Williams again during the day?

A. Williams came in there.

Q. Do you recollect any particular conversation that they had afterwards during the day?

A. No conversation that I overheard.

Q. Were they together privately during the day?

A. They were both in Williams' room; the door was not
3359 closed. I do not recollect any consultation between them that I know of. Mr. Williams was in and out of the office all day. While Oliver was there he was not out of town.

Q. Will you look at "Exhibit S?" Did you sign that as subscribing witness?

A. Yes, sir; I saw Oliver sign it. That was in Williams' office in Buffalo.

Cross-examination:

Q. Do you remember that directly after this Oliver came into the office with Cunningham and this agreement was the subject of discussion, and that Oliver complained to Cunningham in regard to the fact that the agreement, as he claimed, was not the same that had been verbally talked over?

A. They came in together two or three times in the office, but I did not hear any conversation of that kind between them.

Q. You do not remember hearing Oliver make that claim to Cunningham?

A. No, sir; I do not.

Q. How soon after that did he and Cunningham visit the office, do you remember?

A. I do not distinctly remember. I think they were there in the afternoon or the latter part of the morning.

Q. Do you remember hearing a heated discussion between them, or loud conversation—an animated discussion between them?

A. If I had overheard anything of the kind I should have remembered it.

3360 Q. Do a great many persons come in and out of your office during the day?

A. Yes, sir.

Q. Is your office on a principal street?

A. Yes sir; corner of Maine and Seneca.

Q. Can you form an estimate how many persons visit your office during the course of a day, ordinarily?

A. No, sir; some days there would be a big rush, and other days very few. Council day there is a big rush in the morning.

Q. Are there other clerks in the office besides yourself?

A. Mr. Williams has a partner now; he was not there at the time. At that time there were no other persons in the office besides Williams and myself. There are three offices in a row, running through the front. At this time there is an entrance from each office into each other; at that time only two were connected; I kept the first office; that was connected with the next office directly. There was not a third office at that time.

Q. Do you remember whether when Cunningham and Oliver went in they passed into the interior office or remained in the one occupied by you?

A. I think they passed into Williams' office.

Q. Have you much of any recollection with regard to these various documents, except that it is derived from seeing your signature at the time as a witness?

A. I recollect the agreement; recollect the circumstances of signing the assignment.

Q. Suppose you did not see your name there, do you think you would recollect the circumstance?

3361 A. I would recollect the circumstance of the agreement because the way of their being so much together, and their first entrance into the office. They were around the office three or four days.

Q. Do you remember seeing Eschleman there?

A. Yes, sir; I know the gentlemen well.

Q. Do you remember whether he was there during the three or four days, most of the time?

A. He was there, but whether he was there most of the time I cannot say; I think there were five or six came in, at least; they came in in a squad; what drew my attention to their coming in was Ranney; he seemed to be the wit of the party. I know Hunt very well.

Q. State whether Hunt was there during the three or four days most of the time.

A. He was there once or twice; I do not know whether he was

there more than that or not; Mr. Cunningham, Ranney, and Haines were there most of the time?

Q. Were not those gentlemen there all the time?

A. No, sir; they were off an on there.

Q. Geo. J. Robinson was there most of the time?

A. Yes, sir.

Q. Do you remember whether Oliver was there after the first day; do you remember whether he left on the afternoon train the first day?

A. I cannot say whether he left the first day or not; I did not know that he had gone until a few days after, and then he made his reappearance again. I have lived in Buffalo all my life.

3362 Redirect examination:

Q. Are the rooms of Williams' office large?

A. My room originally was a large room. The three offices originally were two.

Q. Describe the offices as they were at this time?

A. My room is probably 8 by 16, and his 12 by 20. It was a large room with a wooden partition. That partition comes up to the top. It was heated by a stove in his room. The door between the rooms is open all the time, except in secret consultations. In very cold days we stayed in his room. Ordinarily the doors are open.

O. F. BARTON.

Subscribed and sworn to before me, this 30th day of August, 1871.

JAMES SHELDON,
United States Commissioner.

ALONZO TANNER sworn for defendant:

I live in Buffalo. I am an attorney-at-law. I have lived here 23 years. My age is 49. I am acquainted with Henry S. Cunningham. I have known him for 15 or 16 years; that I have been well acquainted with him. I have had business transactions with him at various times. I had business transactions with him in August and September, 1869, that I remember.

3363 Q. State whether you saw him in Buffalo in the latter part of August, '68.

A. I did. He was at my office on the 28th day of August, '68, and paid me money.

Q. How do you know that is the date?

A. I know it from the endorsement that I made upon a bond that was left in my hands for collection, given by Cunningham to Mr. Reed.

(Presents bond and indorsement.)

Q. Did you see him two or three days after that in Buffalo?

A. I did.

Q. When?

A. September 2d, '68. Cunningham called at my office and said

that in making his payment to me he had rather exhausted himself financially, and wanted to borrow $50 in money, and I lent him $50 on that day, and gave him my check on the Erie County Savings Bank.

Q. Have you any memorandum?

A. Yes, sir; here is a memorandum on the subject, dated September 2d, '68; "$50, in favor of Henry S. Cunningham; money lent;" and then I marked it across, "paid me by H. S. C. September 4th, 1868."

Q. To whom was that check given?

A. It was given to Cunningham. I have not the check here, but I have no doubt it is payable to his order.

Q. Your recollection is, clearly, that you gave it to him himself?

A. Yes, sir.

Q. Was that check paid?

A. Yes, sir.

3364 Q. On what date was it paid?

A. I have my cash-book from the bank; that was the only check that I drew on September 2d, and they have charged me with the payment of the check on September 2d, 1868, $50.

Q. Have you examined that bank-book yourself, so as to be satisfied with the correctness of the account as the bank states it?

A. Yes, sir; I examine my cash-book every month. I always compare the vouchers with my check.

Q. Can there be any doubt but what Cunningham received that check from you on the second day of September, '68?

A. No manner of doubt.

Q. Where did you give to him?

A. In my office, in this city.

Cross-examination:

I have known Cunningham fifteen or sixteen years.

Q. This was a loan of money?

A. Yes, sir.

Q. Was it expressly to be for any purpose?

A. My impression is that he said he was going West. I think he said he was going out of the city. My impression is that he was going West, and that he was short of funds, and wanted to know if I had any to give him. I said certainly; asked him how much he wanted, and he said fifty dollars.

Q. Did he state how long he should be absent?

A. I do not recollect that he did.

Q. Did he state the business on which he was going?

3365 A. No, sir; I could not swear that he did.

Q. Your recollection of the dates is derived from this document?

A. Yes, sir.

Q. Aside from this you have no recollection?

A. I have not of the precise date of the facts. I recollect of his borrowing money, but I did not remember the date until he called my attention to it this morning. I keep my own bank account.

ALONZO TANNER.

Subscribed and sworn to before me, this 31st day of August, 1871.
JAMES SHELDON,
United States Commissioner.

MORRISON W. EVANS, sworn:

I live in Lockport, in this State. I will be 50 years old in December. I am not engaged in any very definite business now; my business has formerly been furniture business. I have seen Mr. Oliver. I am not very particularly acquainted with him. I saw him in the fall of 1868. I think it was in 1868, down at the Mansion House. I am acquainted with Calvin Haines and Mr. Hunt. Mr. Eschleman has been pointed out to me. I am not much acquainted with him. I know the Devil river property that formerly belonged to Mr. Oliver.

3366 Q. Did you ever have any negotiations looking toward the purchase by you of that property?

A. I did; more particularly with Calvin Haines, at Lockport; I do not know that I can give you the dates; I think it was the last of August or the first of September, 1868. The object of those negotiations was to become the purchaser of that property that Mr. Oliver was owning there, with some others that were held by some one in Buffalo, which Mr. Oliver had the refusal of; Mr. Oliver or Mr. Robinson, I could not say which.

Q. Who do you understand owned this property?

A. I understood Mr. Oliver owned the property.

Q. On what terms was that property offered you?

Objected to as irrelevant.

Mr. Duffield states he will connect the proposition with Oliver.

A. The terms were to assume certain mortgages and pay certain liabilities, amounting, as I had it in my figures at the time, somewhere between ninety and a hundred thousand dollars.

Q. Did you know what these claims and mortgages were?

A. I did at the time; I think one was a Hunt mortgage—so called at the time—another was an obligation that Haines had against him; and another was Haines' firm here in the city; and another was a Detroit matter—I think Mr. Wayne—for putting some machinery in the mill there, and some debts that grew out of the business. There was a schedule made at the time.

3367 Q. Will you look at this Buffalo agreement, beginning at the bottom of that page, and state whether the claims you understood were the same as those there, or, if they differed, in what did they differ?

A. There is one claim marked "4," about $3,000; I do not recollect any such claim. The partnership's indebtedness, I recollect, was spoken of, but I have no recollection of any claim set out in that way.

Q. Was there any claim among those mentioned to you which was not in here, that you recollect of?

A. No, sir.

Q. Was there any money to be paid to Oliver?

A. I think not.

Q. State, as clearly as you can, what you mean when you say that these claims were not to be assumed; whether you mean that the purchaser was to become personally liable for these claims and Oliver to be released, or whether he was to take the property subject to the claims?

A. I understood the matter to take the property subject to the claims.

Q. Was there anything said to you about indemnifying Oliver or releasing him from personal liability?

A. There was not.

Q. What did you do with reference to those negotiations as to whether you were to take the property?

A. I went to Ossineke; looked over the lands; I got some men engaged in and about the mill; one man, I understood, was over the grounds considerably; I went with him part of the day on horseback; I think there were three in the party; before that I went on foot; before I got to the timber I got tired out; the next day
3368 I went on horseback; before I got there I stopped off at Saginaw, and Mr. Haines had had a conversation, or written to me, about a man by the name of Johnson, who was to go up there to look the lands over, and who came there about the time I took leave, and my instructions to him were (Haines being present at the same time) he was to look them over and write me with regard to them; I do not know whether he was to write me or Haines; I saw the letter.

Q. From your own examination and the examination that Johnson made for you, what conclusion did you come to?

A. I concluded not to take the property.

Q. Why?

A. It did not bear the representation to me from Johnson and my observation as I passed and what we found it in looking it over.

Q. How as to its being with reference to the amount of these claims?

A. I could not see where the money was in it to warrant me to make the purchase.

Q. Did you consider it worth that amount of money?

A. I did not, or I would probably have made the purchase.

Q. Did you see Oliver at Ossineke?

A. I do not think I saw Oliver; I saw Mrs. Oliver; took a meal at her house.

Q. Did you see Oliver afterwards?

A. I think I saw him in Buffalo the first time; it was after this time that I was at Ossineke; it was along later in the fall on a stormy day; I think it was sleeting; I could not definitely recollect the month; I think it was quite cool—I know it was; I saw
3369 him at a hotel below here; I do not know that I observed the name; I think it was the Mansion House, though; I had some conversation with him; I told him, if anything, I should not take the property; he was waiting to hear from some parties; a

man by the name of Wheeler was mentioned to me; he was waiting to hear from them in relation to taking the property; he thought he had some men that would take it off his hands.

Q. Did you tell Oliver about Haines' proposition to you; that you had been up to look at it?

A. I am not quite so certain about it; I may have had some conversation with him; I think there was something said about it.

Q. Did not he know that you had been up there?

A. I think he did.

Q. In that conversation did he say anything about your having been up there?

A. I think I told him I had been there.

Q. Whether he knew anything about your having been up there to look at the property and having thought of buying it?

A. I think he did.

Q. What, if anything, passed between you and him about this transaction?

A. I think there was nothing further, only I told him I would not purchase it.

Q. Why did you go to see Oliver?

A. My particular business to see him was whether he was going to bring about the trade with these parties; I was greatly interested with Haines; I had some claims against Oliver, and, if that
3370 trade was made with these men South, he was going to look to some way to get out of it.

Q. You said some one had the refusal of this property. Cannot you recollect who it was that had the refusal at the time you talked with Haines and went to look at the lands?

A. As I understood it Calvin Haines had the refusal of it.

Q. Individually or with others?

A. I am not so sure about that. I think there was Ranney and Cunningham, or Ranney more particularly. No, I think it was with the other Haineses; I won't be positive. I know that Calvin Haines was one of the men. Still there was somebody else associated with him, whether it was Ranney or not. I know that Ranney was in business along with Haines. I presume he was one of the men; who the other parties were I cannot say.

Q. How did that pine land look to you?

A. It did not look very favorable. When I went over the lands from the mill back, the lands I crossed, which was a considerable part of the purchase, had been cut over and chopped over and burned over, and I found a great deal of rough timber, such as Norway, and in looking over the lands I did not find that amount of timber on it represented to me, and the quality of the timber.

Q. What was the character of most of the timber you saw?

A. The timber that I mostly saw was, considerable of it, hemlock and this Norway pine. I cannot recollect the name of the party that went with me through the mill. It was one of the hands
3371 that had been helping make a survey of the lands. At least he told me so. Johnson was not with me at that time. I met Johnson at a place above when I got ready to go home. I was

on the lands two days—one on foot and one on horseback. I looked at the steam mill. The mill was not in very good condition. It was not doing the work that had been represented to me. I do not know but what I heard it was worked to its full capacity. They claimed to be sawing some 40,000 per day. I could not get any of the hands to speak of that number of feet. I think Haines claimed they were sawing 40,000.

Q. Were Haines' representations of the property better or worse than the property actually was?

A. His representations were rather better than I found the property.

Q. Did you understand that the parties who had the refusal of this property were willing that you should take it off their hands?

A. They were anxious I should take an interest with them, or take it off their hands.

Q. Did they urge one more than the other?

A. I do not know that they did particularly. I cannot say as to that. Mr. Haines was rather anxious that I should take it, and he found that I would not take it, and he said afterwards he would buy an interest with me, which I declined also.

(Statement of Mr. Haines, Oliver not being present, objected to.)

Q. From your conversation with Haines, what idea did
3372 you get about Haines' wishes with reference to holding the property himself or letting any one else have it?

Same objection.

A. His point was to get rid of it; to get his money out of it.

Q. Oliver told you that Wheeler and some one were looking at it?

A. I think Wheeler was one of the men; I do not recollect the other.

Q. Had you means enough to make this purchase if you desired?

A. I think I had.

Q. Would it have cramped you particularly?

Objected to as irrelevant.

A. I think I could have purchased it if I had felt so disposed to.

Q. Did you talk to Hunt any about this before you went up to Ossineke?

A. I think I saw Hunt before I went up there. I knew he had a claim against it, and in a conversation with him he said if I would make the purchase—. I wanted to see if he would make some abatement from the mortgage. I believe there wasn't much abatement, but he would extend the time if necessary.

Q. Did you get Hunt to assent to any discount?

A. He did at one time consent to some little discount. I do not recollect how much it was; less than a thousand dollars, or about that neighborhood.

Cross-examination:

Q. Hunt was very willing to take you for a paymaster?

3373 A. He consented, if I would buy the property and would pay him. He consented thus far in case I bought the prop-

erty and would make instant payments, provided I would wish it. I do not think there was anything in particular said—that I would pay him in lieu of Oliver.

Q. Was not that the understanding?

A. 1 would become responsible, of course, under the mortgage if I took the property.

Q. How long a time did you spend at Ossineke?

A. I was there two days.

Q. How many acres probably did you examine?

A. I could not tell you about how many acres. I went over quite a number of sections.

Q. You refer to some property which had been cut over and burned, and which had an inferior quality of pine. Are you able to give the descriptions of the sections and towns and ranges which you examined?

A. No, sir; I am not particularly. The number 16 is given to school purposes. I was up to this land beyond that.

Q. Wha went with you?

A. Two men. One of the hands that was there said he had been all over the land in surveying it. I do not remember the name; I might probably if it was spoken of.

Q. Was it Ellsworth?

A. I think that sounds very much like the name of one of the men.

Q. Do you remember whether Johnson reported seventy millions of pine—9,000 acres.

A. No, sir. No such report.

3374 Q. Do you know this Johnston?

A. I am not acquainted with him much. I met him at Saginaw, and then afterwards I met him at Alpena.

Q. It was the representations of Haines which you did not find confirmed by your personal examination?

A. And furthermore by Johnson. After he went over the lands he wrote me or wrote Haines.

Q. It was the representations made by Haines which you desired to be satisfied about when you went up there?

A. Yes, sir.

Q. About how long were you gone on your trip to section 10, looking at the lands; how many hours did you spend?

A. I went pretty early in the morning. We had a rain storm, and we were driven in the camp, and we had some dinner with them. We spent probably an hour under shelter.

Q. So that there was about two-thirds or three-quarters of a day during which you were actually eugaged in examinations?

A. It might have been that.

Q. Have you had experience in land looking and examining pine lands?

A. Not much in pine lands; still I am judge enough to know whether it is a good tree or not.

Q. Are you engaged in the lumber business at present?

A. I am not engaged much in lumber business. I was not par-

ticularly at that time in that kind of lumber. I am engaged now in hard wood. I have been through some Michigan pine lands before, particularly with a view of purchasing them.

3375 Q. I suppose it would have made no difference to you whether you had paid Oliver money or paid the mortgagees money, if the mortgages were extinct? That amount was regulated upon the amount due upon the mortgage, wasn't it?

A. Yes.

Q. Were you to have your option to pay off these mortgages immediately, or to take as much time as you saw fit?

A. To take as much time as we saw fit in the matter.

Q. Did you see personally any of the mortgagees except Mr. Hunt?

A. I saw see C. Haines and the other Mr. Haines in the city?

Q. They all gave you the same option?

A. Yes, sir. I understood afterwards that the Haines in the city would have taken about 50 per cent. of their mortgage—G. and R. Haines. I think they are brothers of Calvin Haines.

A. About how many miles did you go from the mill, do you know?

A. I think Mr. Ellsworth—it that was his name—said when we were at Hubbard's Lake we were about five miles from the mill.

Q. Do you know whether some of the lands are more than nine miles from the mill?

A. I know in my observation in looking over the map some of them were about nine miles.

Q. I suppose naturally the lands nearest the mill would be earliest cut?

A. That is usually the case, I think.

3376 Redirect examination:

Q. You state in your direct examination that you did not understand that Mr. Oliver was to be released from his personal liability under those claims, and you say in your cross-examination that if you took the property you would become responsible for the mortgage. Explain what you mean.

A. Become responsible for the mortgage? I supposed by that if I bought the property I would have to pay the mortgage. Still, it was in my hands to do what I pleased with that. Mr. Hunt might take the property if he felt so disposed. What I mean by that—if I bought the property I think I should become responsible and pay the indebtedness, if I thought worth while purchasing it.

Q. If you did not think it worth while, what then?

A. I would let the property pay it.

Q. When was this offer of Haines to you of this property revoked in any way; how long have you got the opportunity of taking this property?

A. I do not think there was any particular time stated about it.

Q. Was it ever renewed to you?

A. Haines has spoken to me several times; wanted me to come and take an interest with him at the same that it cost him.

Q. Has he ever offered the property at any time on the same terms since?

Objected to as irrelevant.

A. Yes, sir.

Q. How late is that?

3377 A. I think within a year; it might possibly be a little over; and then he has within a week or ten days been wishing me to take a certain interest with him.

SAMUEL ELLSWOTH sworn for defendants:

Q. What is your age, residence, and occupation?

A. 35; Ossineke; and a laborer.

Q. What kind of a laborer?

A. Anything they set me at.

Q. Have you an office up there of any kind?

A. Justice of the peace. I have resided at Ossineke since the summer of 1867, and worked there since 1866. I am a married man. I have known David D. Oliver about 14 years. I know his wife. I was justice of the peace on the 21st of January, 1869.

Q. Will you look at "Exhibit S," now produced to you, and state what you know of the execution of the same by Sarah A. Oliver, wife of David D. Oliver, and what, if anything, you did officially in connection with that deed?

A. I took the acknowledgment of this deed by putting the usual questions to Mrs. Sarah Oliver.

Q. Did you put the questions at the time of the signature there, before or after?

3378 A. I think I put them before.

Q. Did she sign it in your presence?

A. Yes, sir; I think that was the same day. It bears date the 21st—that is my figures—21st of January, 1869. That is my signature to the certificate of acknowledgment—that was put there on the day of the date. I think the deed was read over and explained to Mrs. Oliver before she signed it by Mr. Oliver in my presence and hearing. I also witnessed the deed as to Mrs. Oliver's signature; that is my signature. I think long enough time was spent by Oliver in my presence to read and explain the whole to her—I think some half hour's time. I was to work on the dock at the time that Henry M. Robinson came to me and wanted I should take the acknowledgment of the deed. We went up to Oliver's house; he was then living with Mrs. McClosky. I think we met Mr. Oliver on the track close to his house, and Robinson stated our errand, and we went into the house together, Oliver, Robinson, and myself. I think he called his wife, and there told her what we wanted, and read the article over, or some part of it. I don't know whether he read it all or part of it. I know he was in there some time with the paper. I then put the usual questions to her and she signed it in my presence, Oliver himself being present at the time of her signing.

Q. That is the time of the reading of it?

A. Yes, sir.

Q. You examined her separate and apart, however, in the usual way?

A. Yes, sir.

3379 Q. Have you been more or less connected as a workingman with the business done at that mill, and what way?

A. I was during those years. Last year I have been working outside more on the farm.

Q. During 1866–'67?

A. Yes, sir.

Q. During that time that you worked there did you ever hear of any company that had carried on business under the name of the Ossineke Mill and Lumber Company; anything of that sort?

Objected to as leading.

A. I think not. Whatever intimation I have of that fact is that part of the property they have on hand is marked that way; that is, "Ossineke M. C." I noticed bags in particular marked that way. I didn't hear of any business or partnership conducted under that name. I was well acquainted with the Robinsons; with Mr. Robinson here I was well acquainted. He has always addressed me familiarly whenever we have met. During the time they were up there I knew them well.

Q. Did you and Johnson go over the Ossineke mill property, so called, for Messrs. C., E. and G. R. Haines during the summer of 1868, with a view to estimating the timber in town. 29 north, of range 8 east?

A. We did. Johnson is a man residing in East Saginaw, brought up there by Haines for that purpose.

Q. Did you assume to go over the Preston lands, as well as the Oliver lands, so called?

A. I think we did; that is, we were supposed to go over the whole. The estimate we returned to them was less than 50,000,000

3880 (fifty millions); about one-half of that we returned as Norway, and the other half white pine. The estimated percentage of uppers was eleven per cent. In that examination we only went over part—in fact, we did not go into town. 28 at all. We went over part of the sections; we didn't go over all in 29. We went over part of the sections and made a general estimate from what we saw in 29 as to what was on the lands in 28; and made the return that if those in 28 and the remaining part of 29 were as good as what we had seen that there would be less than fifty millions. That was the way that examination was had. H. M. Robinson had been round about that mill, to my knowledge, since the spring of 1868, I think; I think he was recognized there as agent by the firm of Oliver & Robinson. I never heard him spoken of or claim to act in any other capacity than agent.

Q. Did you ever hear of Oliver making any claim as to his being anything else than an agent?

A. I think I have heard him say he was a partner since the dis-

solution of Oliver and Robinson, or since Oliver moved away from there; since the commencement of this litigation.

Q. Did you ever hear H. M. claim that he was?

A. No, sir.

Q. Do you know George B. Melville?

A. I do.

Q. Do you know what his views were as to running the water mill up to the time he was foreman for Oliver?

Objected to as incompetent and irrelevant.

A. I think he was against running it. I heard him make
3381 those assertions that it could not be run in connection with the other mill; I think he did not state why; I think it was simply because he was acting as agent for those parties; this would be in the spring of 1868. The mill did run in 1867, and started in the spring of 1868, and I think it was about the time of shutting it down. I know George W. Hawkins; I know of his having been appointed an agent by Cunningham; that was in the fall of 1868.

Q. Do you know whether or not George J. Robinson ever recognized him as such agent?

Objected to as leading.

A. I think not; I only know from the fact that I went into the woods with Hawkins; Robinson told me if I went into the woods with Hawkins to look over lands, I must look to Hawkins for my pay; I don't know what his reasons were for saying so.

Q. Did you understand whether he recognized him or refused to recognize?

A. He refused to recognize him, the way I understood it. I think that Hawkins was foreman there that season for Oliver & Robinson on the river; in fact, I worked under him for Oliver & Robinson.

Q. Was he ever recognized in this new position of agency?

A. I think not; I think Robinson always seemed very cold towards him; never was on intimate terms as he was with Melville; Melville was recognized by Robinson as his agent.

Q. Something was said by some of the witnesses in this case that George J. Robinson, or the Robinsons, were endeavoring to
3382 oust Oliver from that property and that place; did you ever hear of anything of that sort while you were there?

Objected to as leading.

A. I never did.

Q. Do you know a man named W. F. Leech?

A. Yes, sir; he scaled for me.

Q. What sort of a man is he to scale logs, as far as his capacity and intelligence goes?

A. I never would want him to scale for me for another winter; I thought he was a "scaly" scaler. He was a man that could not read nor write. I did the summing myself of his columns of logs—that is, the figures—before he submitted them to the company. He knew figures; and could set them down and add them up, but he

made a good many mistakes. He used to add up his own columns and then I run over them and found a great many mistakes. I am not what you might call an expert in figures, but if I go over them enough I will get them straight. He did not know enough about figures to enable him to do that particular form of business.

Q. Do you recollect of his attempting to scale or to inspect lumber for George J. Robinson on any occasion up there and his being stopped at it?

Objected to as incompetent and irrelevant.

Mr. DUFFIELD: The question is put to show his qualification, merely.

A. I saw him, I think, inspecting one cargo of lumber, or part of a cargo, at least. I think it was part of it inspected by Leech and the rest was shipped in bulk. The whole thing went in bulk
3383 and he went to shoving. I don't know what Robinson's reasons were for doing so.

Q. Do you know whether Robinson stopped him selling?

A. I think he did; I don't know why; I was working on the vessel myself; that was in the summer of 1868. I know the water mill and the steam mill up there, and their relative positions to each other.

Q. Will you give us your judgment whether the two could be run to profit simultaneously at the same time?

A. I believe I answered that before. I made a slight mistake, as it appears, in my evidence before in regard to their cutting the larger class of logs to advantage in that mill—the old mill. By going and taking an actual measurement of the saws, as I was requested since, and of the gate, I find the utmost capacity would be 2 feet 10 inches (two feet ten inches). That would be the largest log that would pass through the water mill; that is, to cut it without assistance.

Q. What proportion of the logs received at that mill were of that diameter?

A. There were a good many logs that were larger that year. The statement I made before, in fact, I always felt as though that mill could have been run to advantage by cutting the larger class of logs, as it was an upright, but since I have measured them I have altered my mind; I found it didn't have the capacity to receive the larger class of logs. I think the two could not have been run together with profit. They would have interfered, as I stated before. The sluicing of the logs to the lower mill would have drawn off the pond of the upper mill so it could not have been run until a new head had been raised.
3384 In supplying the lower mill they had to pass through the pond of the water mill. I am not acquainted with the way in which the lumber was manufactured at that mill generally. I don't mean as to its qualities. but as to the general character of the logs that were sawed and converted into lumber. For the last few years the qualities have run pretty well into the uppers; that is, they have endeavored to get the better class of logs to manufacture.

Q. Don't all lumber mills in that region do the same thing?

A. I think they do undertake to work their best lumber; that, is the general proportion of people of late years, in the low price of lumber, as it has prevailed in the market.

Q. Don't the mills all up there undertake to work up their best timber?

Objected to as leading.

A. I won't say all the mills, but part of them that I have been acquainted with.

Cross-examined by Mr. RUSSELL:

I have been sworn before in this case on the part of Oliver. I have not conversed in particular with Henry M. Robinson about the subject-matter of my former testimony; nothing only in relation to this saw of the water mill. I have not sat down with him with a memorandum of my testimony before me; neither with Mr. Duffield, nor with any other person.

3385 Q. When Robinson came to you to have you take the acknowledgment what did he say in regard to Oliver about the deed being signed by Mrs. Oliver; did you hear him make any threats to Oliver in regard to the matter?

A. No, sir.

Q. Did Robinson make any threats in your presence in respect to Oliver if he did not compel his wife to sign the deed?

A. No, sir; he never at any time made any such threats; I have no knowledge of his making such threats; if there ever was any such transaction ever happened it is something new to me; I never heard of it before.

Q. When H. M. Robinson was there and building a house what did he say in regard to the money which was put into the concern, as to whose it was; did he not say it was his money?

Objected to.

A. He told me, I think, at that time that he was there to look after his interests—his own interests.

Q. What did he say his own interest was?

A. I think it was money he had furnished his son to carry on the business there.

Q. Did he say how much; whether it was all or a less part than all?

A. He did not.

Q. Whose house did he say that was?

A. His own.

Q. That house was built on the property of Oliver & Robinson?

3386 A. It was built on the property, but, as I understood Mr. Robinson to say, he had purchased an acre, and was building on his own ground.

Q. How many acres can a man go over and carefully examine in a single day?

A. I never went over and examined above 160 acres; I have

heard of men that would examine a section—four times as much—but I think it must be very sparsely timbered land; I think Johnson and I returned the fourth day; we were engaged in the examination during four days; we did not go outside of town. 29.

Q. At whose invitation did you attend to assist in the examination?

A. I think George Robinson's—that is, he told me that Haines wished some one to go with Johnson, and for me to go; I was paid, I know, by the firm of Oliver & Robinson; Oliver & Robinson were in business at that time; I believe I received my instructions from George J.; I think he was the man.

Q. Did he state it was for Haines' benefit?

A. He told me it was for Haines we were looking over the lands; he didn't say who it would be benefiting; I never saw the man Johnson at all until that time.

Q. Who made up the report, you or he?

A. He made the report; still, the grounds we went over we agreed upon — our figures; I have not seen the figures since that time—at least I had only seen them in a memorandum of my own; I have not got my memorandum with me; I am certain it was not 75,000,000 (seventy-five millions) instead of fifty millions; I am certain it was fifty or less than fifty; I am prepared to testify it was not seventy-five; I do not know who has the original re-
3387 port; it was in writing; it was drawn up by Johnson and addressed to Haines; I came from Ossineke now to give my testimony at the request of George J. Robinson.

Q. Has H. M. Robinson conversed with you in regard to what testimony you should give?

A. No, sir.

Q. Did H. M. Robinson pitch into you about your former testimony?

A. He did.

Q. By Mr. DUFFIELD: And you found yourself mistaken?

A. I did, by going and taking an actual measurement of the saw.

Q. State what correction you wish to make to your former testimony in reference to the capacity of the steam mill in sawing logs; you said before it would saw small logs?

A. I didn't wish to be so understood; I think I told you before in my former testimony that the steam mill had a six-foot saw—a six-foot circular—which any expert in running a mill would know what sized log it would cut; it would cut a three-foot log running it straight through; it will cut a larger log by canting; I have stated already that the utmost capacity of the water mill would be a two-foot ten-inch log, as I measured from saw to sash.

Recross-examination:

Q. Were there a good many large logs that size you named?
3388 A. Not a great many; our logs would average that season, I should judge, about two and a half feet—during the season of 1868; it was a large class of logs.

Q. Would not that class of logs cut more than eleven per cent. of uppers such as you reported?

A. It would and did, but how much I can't say. I never saw the shipping bills. I think in the former estimate I made in running over those same lands that they lumbered that winter, before they went into lumber with Hawkins, that it would run 40 per cent.; whether it cut that or not, I don't know. I made this estimate with Hawkins since I made the estimate with Johnson. This was in town. 28, and Johnson and I were in town. 29.

Q. How happened you to make the estimate with Hawkins in town. 28?

Objected to as not cross-examination.

Q. When was that estimate in town. 28?

A. After the transfer of the property by Robinson to Cunningham.

Q. Do you remember of having a log in the water mill before it was shut down that furnished twelve hundred feet of lumber?

A. I have cut logs to the full capacity, but I can't say as I ever run the upright there in the mill myself.

Q. Were you in the habit of reducing the size of the logs in any way to saw them in the water mill, or cut them in two?

A. I never cut any in two. I have put logs through there that had swelled butts on them, by cutting the butt off, and then running the slab square through, so as to make the butt as small as the top; not otherwise. That was not commonly done. I don't remember ever doing it but once.

SAMUEL ELLSWORTH.

3389 HENRY M. ROBINSON sworn for the defense.

Examined by Mr. DUFFIELD:

Q. What is your age and where do you live?

A. I am 61 in July past. I live in Alpena county, [at] a place called Ossineke. I have lived there somewhere about three years. I went up there as an agent for Oliver, and I continued there with my son after Oliver sold out to the present time, save what I am away here. When I was agent the firm was Oliver & Robinson.

Q. How came you to be appointed agent?

A. Oliver asked me if I would assist them in selling lumber. I told him I would, and the first word that I heard of the agency was from David D. Oliver. He had a card printed with my name on as agent, and he gave me a lot to distribute round. I acted as agent of the firm in three or four sales of lumber, probably not to exceed four. I accounted for the money I got and gave it over to my son.

Q. Five hundred dollars received. Did you ever account for that?

A. From Mr. Miller? I accounted for that by sending it to my son as soon as I could.

Q. How long after the contract was made did you send it?

3390 A. probably inside of a week or ten days. The first opportunity I had I sent it. It was in the winter time, when there was no express that I know of. The express offices were all out in

this State. I made application at the express office, and they would not take it. The first opportunity I had I sent it, with some money of my own.

Q. When did you first become acquainted with Oliver?

A. About a year previous, I should think—between 1866 and '67. I would not like to say; it was within the year.

Q. Did you have any negotiations with him with reference to the purchase of an interest for your son?

A. I did. That was in the fall of 1867, I should think. My memory is not good on dates.

Q. Did you take part with your son in negotiating that purchase?

A. I did, in the city of Detroit, in Mr. Duffield's office principally.

Q. Do you remember what amount of indebtednes Oliver represented at that time that he had?

A. To the best of my knowledge and belief, not to exceed $40,000.

Q. When did he state that to you and your son?

A. When we were about making this purchase of him of this interest?

Q. How much did you find it to be afterward?

A. I never computed the whole amount as I found it, but should think between $80,000 or $100,000, that I know of.

Q. Was that indebtedness existing at the time he represented to you that his indebtedness was $40,000?

A. Yes, sir. They were old claims.

3391 Q. Was you a partner in that firm?

A. I never was to the value of a cent.

Q. Who was the partnership?

A. David D. Oliver and Geo. J. Robinson.

Q. How old is your son George?

A. I would not really like to say. I know he is over 30 at the present time—between 30 and 33.

Q. When did you go up there first?

A. I went up there first at the solicitation of Mr. Oliver to see the timber, previous to making the purchase—previous to my son's making the purchase, understand me all the time. I did not furnish my son entirely with the means. He had money of his own, but what he lacked I furnished him.

Q. When did you go up there to stay and engage in the business; what month in the year 1867?

A. To the best of my knowledge, it was in the spring. I didn't go up to stay until spring. In January, I think, I went on this business. I continued to act for Oliver in any capacity he should see fit to put me or ask of me until he sold out.

Q. Are you acquainted with the mills up there?

A. I am.

Q. Will you state in 1868 what was the capacity of the water mill for sawing, and what its value was?

A. To the best of my knowledge and belief, it had no capacity

and it had no value. I mean by that the main sills of the building were rotted down; it was a wreck.

Q. Wasn't it running at all?

3392 A. I think they did saw a few feet of lumber when I was there. It was like the man's gun—it wanted a new lock, stock, and barrel. To every appearance it was substantially worn out. I have no recollection of seeing it run, but there were boards sawed when I was round the premises, but not for me to see them. I may have been at Alpena or somewhere else.

Q. Who ordered that mill stopped?

A. I never knew of any one; I never did; I simply told the man it was money thrown away, but I had nothing to do with that. If the mill was in good order it would cut 3,000 feet a day; I think it would not cut any more. It will cut a log two feet ten inches, and saw it, and nothing more, unless you take an ax and chop it down. No log can be put in that mill four feet in diameter for the reason that from the edge of the saw to the edge of the frame is two feet ten inches, and from that to the top of the teeth of the saw is the same. Any expert will tell you it can't be done. I think the steam mill is capable of cutting 80,000 feet a day in the present situation. The two mills could not be run at the same time, because the pond that holds the logs for one mill holds them for the other, and passing from the upper dam to the lower mill it draws the water from the mill and there is nothing left to run it with. I went over these premises in the fall of 1867 to a certain extent, as far as Oliver would take me.

Q. Did you form any estimate of the value of that property there at that time; if so, will you give it?

A. I only saw a small part of the timber land, and I should think Oliver's statement was correct if all the timber had been like that.

3393 Q. How much had it on it, do you know?

A. I don't think it had seventy millions since I have been there.

Q. Suppose it had been but seventy millions, what would that property have been worth at that time, in 1867?

A. I am not posted in lumber, and I don't know. I should think the property was worth as much to-day as it was [in] 1867.

Q. What was the value of that property in the fall of 1867?

A. I would at no time ever since I have known the land have given $70,000; not the moment George took it I would not.

Q. What do you mean, all the personal property?

A. I mean everything connected with the whole thing would never have drawn $30,000 out of my pocket for it.

Q. Would you say the same of it in 1868—the fall of 1868—before Oliver sold out to Cunningham?

A. Yes, sir; I should. There never was a time I would give any more for it to the present moment.

Q. Can you state how much has been put upon that property and in what form since the fall of 1868, when Oliver sold it, by the parties now running it?

A. I should think the improvements put on it has cost them in cash $40,000. It consists of a splendid gang—the best on the shores—splendid engine, two patent edgers, two six-foot circular saws, with other machinery to carry on the mills, and a very large expense on the dock, with heavy improvements in the river and new
3394 dams wherever they were needed, some of them very costly.

Q. Were there any roads built or any buildings put up there?

A. There were some new shanties put up on the premises; I think the books show the cost of roads and buildings to be $17,000 for the last year; for the past year's lumbering, the roads and equipments connected with the business.

Q. Do you mean for the last year, or since the year 1868?

A. It is now accessible; yes, sir; since the year 1868.

Q. Do you know of any partnership up there under the name of the Ossineke Mill Company?

A. I never did; never heard of such a thing; I knew of the use of that style of name; it was used as I should call in business a trade-mark; there was a stencil got to mark bags, and a stamp to mark tools, but I never saw an ounce of goods marked to the name; I know no party of that name; the only firm I ever knew of up there is the present one, except David D. Oliver and my son; the first one was Oliver & Robinson; my knowledge is not clear upon any other firm, saving the present.

Q. And the other was——

A Cunningham, Robinson, Haines & Co.

Q. Who composed that firm?

A. Four members; this gentleman, my son, Calvin Haines, and Philip Ranney; I never was a member of that firm to the value of one cent; Hunt and Eschleman were never members of that firm, with any knowledge of mine.

3395 Q. Has that been the style of the firm ever since Oliver sold out to Cunningham, as it is now, Cunningham, Robinson, Haines & Co?

A. I never have known of any other firm taking the place of Oliver & Robinson excepting the present firm.

Q. Do you remember whether there was a firm of Robinson, C. Haines & Co., at any time before that?

A. I would not say altogether in confidence; I know very little about it; I can remember no firm doing a moment's work, or doing any business with that name; there may have been, and I know nothing about it; I never had anything to do with the parties managing the business—not a particle; I never said to Wayne or anybody else that Hunt or Eschleman were members of the firm.

Q. Was you ever party in any way with George Robinson, G. W. Hawkins, or anybody else to a plan by which Oliver was to be turned out of that concern, and did you threaten to get rid of him in any way?

Objected to as leading.

A. I never knew of such a thing; I never was a party; I never

threatened him with personal violence in any conceivable form, and would risk my life to save that man's this moment if it was necessary.

Q. Do you know of Robinson's ever making any threats as to your son George?

A. Oh, no; I know of nothing of the kind; I have heard Oliver threatened the boy's life, but I didn't believe it; I should want to hear him say it myself before I would believe it.

3396 Q. Did you have any personal knowledge and did you know of the purchase of Oliver's interest by Cunningham at the time it was made in September, 1868.

A. No, sir.

Q. Were you there at that time?

A. I was, and I saw Cunningham.

Q. Did you have any talk with him about this purchase before it was made?

A. I didn't see him until it was made. At any rate, I know nothing of the purchase, if that answers the question, and Cunningham himself was the first to tell me. I didn't dream of it before that.

Q. Was the firm of Oliver & Robinson, before Cunningham purchased, debtors to you to any amount for money advanced them; and, if so, how much?

A. I advanced to Oliver the sum of $22,000 altogether, and assumed a large amount of indebtedness, which I paid as it came round. I should think I advanced not a great ways from $30,000.

Q. What was your object in staying after Oliver sold out?

A. Because my son was there, and I had no other home. I am homeless.

Q. Have you been paid the amount due you by the firm?

A. I never have been paid anything.

Q. Whether you have been paid for your services?

A. I never have been paid anything, neither for services nor for what the firm owed me.

Q. Were you in Buffalo at the time of the agreement that was drawn up in Williams' office. Were you present at the consummation of it, in October, 1868?

3397 A. I never saw any agreement at all between these men executed, or anything done with it. I have heard them talk.

Q. Were you down there at that time?

A. I was.

Q. Were you not present in the office of Williams at the time it was closed?

A. There were two offices, and I was in the outside office, and they done their business in the inside office. I don't think I ever saw the agreement at all. I have no recollection of ever seeing it.

Q. What is the value of that pine timber appertaining to the Devil river property, embraced in the Hunt and Eschleman mortgage? What was it worth in the fall of 1868—the lands with the pine on them?

A. The lands are principally pine barrens, I think, of no value with the timber off of them. I would never give $40,000 at any

time between *between* 1868 and the present time for the pine lands without the personal property. I would not at any time since I have known what timber there was on it. I don't include the Preston lands. The Preston lands may have been worth ten to twelve thousand dollars—actually worth it.

Objection made to the witness leaving the stand and suggesting questions.

Q. Did you hear Haines' remark to Wayne in my office when he was asked to indorse the notes of Cunningham, Robinson, Haines & Co., given in payment of certain machinery contracted for or bought of Wayne?

A. I did. Wayne asked him if he would indorse that note,
3398 and he said it was good enough without his indorsement. I never heard him say anything more about it. It was by mere accident I heard that.

Q. Did he make any remark that indicated that he was holden or was a member of that firm?

A. Not in my hearing; nothing like that.

Objected to as leading.

Cross-examination by Mr. RUSSELL:

I was formerly a member of the firm of Wayne & Robinson; to the best of my knowledge a little over seven years.

Q. Before you and your son had this negotiation with Oliver, had you ever had any practical or personal acquaintance with pine lands, or the estimation of their value or the manufacture of lumber?

A. I hadn't more than a mechanic who had worked in wood all his days and seeing saw-mills work and making machinery for saws and owning a saw-mill once and running it.

Q. Had you ever been in the lumber business in Michigan?

A. I had at Middlebury, on the Detroit & Milwaukee road, in 1858—Leveret B. Walker and myself.

Q. How did you commence your negotiations with Oliver—by letter or in person?

A. I received a letter from Oliver, he being at Lockport, stating that he would trade his property for so much money—one-quarter of it, $35,000—$20,000 to be paid down, and the $15,000 to be paid out of the earnings of the mill, or, as he expressed it, never, if the mill did not earn it.

3399 Q. How long had you been previously acquainted with him?

A. From the time he commenced buying machinery at Wayne's until he sold out; during the whole time his boilers and machinery were making; I first formed his acquaintance as a customer of Wayne & Robinson.

Q. Did you, after that, go with your son and visit Ossineke?

A. I did; my son was at that time keeping books in the firm of Evans & Walker; I had retired from business at that time; I was

not engaged in any occupation whatever; my son and I remained at Ossineke at that time, I think, not to exceed twenty-four hours.

Q. Did you go on purpose to look at the property?

A. Yes; at Oliver's solicitation; this was some time in the early part of the fall or in the summer.

Q. Did you give any more than twenty-four hours' examination to it?

A. I did not.

Q. Did you go into the book-keeper's office and examine the list of assets and liabilities?

A. I did not.

Q. Have you given testimony at Saginaw once on this matter or a similar matter?

A. No, sir; I think not; I gave testimony in the case of Ronalds & Judd at Saginaw against Robinson.

Q. Did you not testify at that time that you did go into the book-keeper's office and examine the books and lists of assets and liabilities?

A. I have no recollection of testifying to anything of the kind.

3400 Q. Did you not go to Ossineke for the purpose of looking at the lands, and also at the assets, and also of looking into the liabilities of the firm before you should buy in, or before your son should buy in?

A. No. I went for no other purpose than to look at the timber, which he represented would be two hundred millions.

Q. Did you intend to let your son go into the partnership with Oliver without understanding whether he was largely or to a small degree in debt?

A. I did not.

Q. You testify that Oliver stated his debts to you at $40,000. Did he not make this statement at Ossineke?

A. He made it at Mr. Duffield's house, on the next street here. It was after I went to Ossineke.

Q. What reason can you give for not examining the list of debts and assets at Ossineke?

A. I am no book-keeper, and never had anything to do with books. I should have referred it to my son if it had been done.

Q. Did he examine the list of liabilities and assets?

A. I don't know that he did. I don't know whether he did or not, but I know he preferred to walk back afoot to having anything to do do with it.

Q. How came you to change that unalterable intention?

A. By representations that Oliver made to me after I came back.

Q. Your story is, then, you went to Ossineke to look at the property with your son. You remained there twenty-four hours, became disgusted, and came back?

3401 A. No. I did not become disgusted; my son did.

Q. Then you say Oliver's powerful persuasion was such that in three days he turned you round, and you both went in?

A. I don't think he ever turned the boy; he turned me.

Q. Didn't Oliver, when you determined finally to let your son go in and to furnish him with money, did he not give you a statement in writing of the liabilities of the concern, including the mortgages and other debts?

A. He gave a certain amount of liabilities to Mr. Duffield at Mr. Duffield's house, and I saw it.

Q. Did you receive in writing a statement of the mortgages and other debts at Ossineke and a statement in writing of the lands and the personal property at Ossineke?

A. I think not.

Q. What did you receive in writing?

A. I think Oliver made a sort of a lump job of it; that he owed so much and the property was worth so much.

Q. Did he give you the amount of the indebtedness in writing?

A. I think he did.

Q. Did he give you in detail the amount of the mortgages with the names of the mortgagees, and the indebtedness with the names of the creditors?

A. No, sir; that I didn't see until after.

Q. I mean to either of you?

A. I never saw anything of the kind that either of us got.

3402 Q. The question is, before Geo. J. Robinson became a partner in that concern, and put into it the money he received from you, did either he or you receive a written statement of the indebtedness and assets of the concern at Ossineke?

A. Not that ever I knew of.

Q. How many interviews did you and George and Oliver have at Mr. Duffield's house or office?

A. A great many.

Q. The whole matter was thoroughly canvassed, the pros and cons?

A. My poor boy, in deference to his father, raised very few objections, and there was very little said in reference to it except what Oliver said.

Q. Did your son go with you to Duffield's house?

A. He did.

Q. Who employed Duffield to make the writings?

A. I really can't say. Mr. Duffield had been my counsel for years.

Q. Had he ever been counsel for Oliver?

A. I can't say.

Q. Can you explain why the articles of copartnership were dated back one month?

A. I heard Oliver tell Geo. J. Robinson that he had a large pile of lumber on the dock and he wished to give him the benefit of that lumber, and so dated it back so that he might have it in his copartnership.

Q. How much money was paid down?

A. I don't remember. Oliver swore on the witness stand

3403 he got $22,000. I paid him as fast as he asked it. I don't remember how much money I paid in, nor how much my son paid in.

Q. Have you a bad memory?

A. A shocking bad one.

Q. What was the real reason you did not have your own name appear?

A. Because I had gone out of business, and was too old a man to work any more. It was not on account of any difficulty with my wife; that would rather have driven me into it. The idea is preposterous.

Q. Can you tell when you made the first payment, or was it before the writings were made?

A. He got money of me—$3,000—several days before the writings were made, or before the agreement was closed, and gave a bogus note for it.

Q. What do you mean?

A. A note without stating the amount. He said, "Received of H. M. Robinson, October so-and-so," and put no amount of money on it at all, and being blind, having no spectacles on, I put it in my pocket and didn't know anything about it.

Q. Your son had his eyesight?

A. My son didn't know anything about it. He was not aware of the transaction. I forced him into it.

Q. Wasn't he aware of your payment of $2,500?

A. Yes, sir.

Q. Didn't he converse with you as to what sort of documents you should have?

A. I never got any; he gave a note back; I will fetch it down and show it to you.

Q. Did you go up there in the winter?

3404 A. I did. I stayed a very few hours, though—probably one night.

Q. What was your object in going up there?

A. My boy represented to me that Oliver had taken the provisions belonging to the store and paid his private debts along the entire shore, and he was then out of food, and I went up with money to him.

Q. What did you do in regard to the alleged misconduct of Oliver?

A. Nothing. I was powerless. I took no measures to right the wrong. I never had a word with Oliver about it in any way.

Q. If you consider he was not treating your son as a partner, ought you not to complain to him?

A. No, sir. Above everything in the world you should keep from making difficulties with partners, and my son thought he could protect himself, and I acted accordingly.

Q. Can you name a single debt Oliver paid with victuals?

A. I cannot. I was only there a few hours. I knew nothing of the business there.

Q. Did you make contracts during the winter for that firm?

A. I made a few; I think probably four. I don't remember making four, but I think they would not exceed four. In making those contracts I acted directly as their agent.

Q. Were you consulted by Oliver and by your son with reference to the management of the business?

3405 A. Yes; I have been frequently consulted by both. I advised with them especially about the Haines contracts, and I guaranteed one of them. I loaned the firm money, but how much I am unable to say.

Q. Did you take security for loans?

A. I had a chattel mortgage upon all the personal property—the logs.

Q. Did you ever foreclose?

A. I never did.

Q. Did you receive a bill of sale of lumber in the summer of 1868?

A. I think I did.

Q. What was the object of those transactions?

A. To secure the money I had advanced to the firm. I first got a chattel mortgage on the logs, and now I get a bill of sale on the lumber manufactured, because I paid for the manufacture of the lumber with money of my own. I had security on the lumber itself.

Q. Were those securities adequate to meet the amount of your advances?

A. They have never met a dollar of it, and they were not adequate to meet them.

Q. In the spring of 1868 did you go to Ossineke, and why?

A. I went up there at the solicitation of Oliver.

Q. What did you get when you got there?

A. Very little. I worked a good deal of the time as a laborer, building dock or railroad track; done anything Oliver or any one else asked me.

Q. At that time had you an interest in this store?

A. No other than for money loaned.

3406 Q. Do you undertake to direct the management of the property with respect to the end of getting your money out?

A. No, sir. I thought my son would work it out for me, and I never interfered in the management at all except in getting work that Oliver sent me to have done. I got some machinery made at his express invitation.

Q. Did you as a matter of fact assume the direction of affairs at Ossineke in any particular?

A. I never did.

Q. In the summer of 1868 did you consider yourself a good judge of pine lands and able to examine them with reference to finding out the amount and value of timber upon them?

A. No, sir.

Q. Had you at that time examined carefully any of the Ossineke lands?

A. None only what Oliver showed me. I have been over a great deal of it, and some places where I expected to find timber it had been cut off as black as your hat.

Q. Can you identify a single description of land you visited and found in that condition?

A. No; for the reason that I don't know the descriptions now, but I know the country. I should think I had seen 4,000 acres.

Q. Did you ever employ anybody familiar with the subject to make an examination of those lands at any time?

A. I never did, but I have conversed with experts who had done it as to the value of the land at that time.

Q. You don't profess then, to speak of your own knowledge?

3407 A. Not as an expert.

Q. You profess, then, to speak only what you have heard other people say?

A. And what I have seen myself.

Q. You say you think that Oliver's indebtedness was from $80,000 to $100,000, and he represented to you he was in debt only $40,000; will you give, if you please, a list of the mortgages or other debts which made up the $80,000.00 which you claim; I mean the debts existing on the property at the time you commenced negotiations? I understand you claim he deceived you?

A. I do. He owes, so far as I know. It is the general opinion of people, and I have talked with the parties who claim they have the claims; that is how I know.

Q. The way you know is from talking with people, and what people say?

A. Yes; this is E. & G. R. Haines' talk.

Q. Did you at any time ask for access to the books or list of liabilities and assets and receive a refusal?

A. I never made any such inquiry. I don't think I ever saw the inside of Oliver's books in my life to know what was in them.

Q. Didn't your son at the time of negotiation beginning and ever afterward have full access to all the books kept at Ossineke?

A. I should think he had—that is my impression.

Q. Will you state how your son or you can complain that Oliver didn't state to you facts, or put you in the way of ascertaining facts, in regard to the indebtedness and assets?

A. We knew nothing about this, as I stated, until the contract was made and the money was delivered.

3408 Q. Did you not have full mail means of ascertaining the full facts before any contract was made or money delivered?

A. I never had any other means than his own statement.

Q. Didn't your son have full means of ascertaining the full facts in regard to the assets and liabilities before he became a partner?

A. I stated before my poor boy was dragged into it, and made no trouble about it.

Q. Didn't he have sufficient opportunity?

Objected to.

A. I know nothing of what the boy done in the matter.

Q. When you say that you don't think there was seventy thousand dollars' worth of real and personal property there, you make

that statement from information derived from other people, I suppose?

A. There is a great deal of it I consider myself an expert at, as regards the value of the machinery and the grounds and such matters, but I had just a casual glance over his grounds.

Q. You testify that you think the lands with the timber on them at the time your son and yourself went there, belonging to Oliver, were not worth over $40,000, and that the Preston lands were not worth over $10,000 or $12,000, and you state that the new concern now operating there probably have invested $40,000 in improvements of a permanent character. Will you please explain how
3409 it pays for that concern or any other concern to make such extensive and permanent improvements to run property which was so comparatively worthless?

A. I am rather impressed with the belief that the more they put in the poorer they would be.

Q. In other words, they have made bigger fools of themselves than you have?

A. I think they have.

Q. You consider, then, the permanent improvements they have put there for the purpose of running that property are worth as much [as], or more than, the entire property when you went there?

A. No, sir. I don't clearly understand your question. You draw a wrong story out of me. I have advised these people to make a very large dock, and have this company sawing lumber by the thousand, and not be depending upon their own woods, for they have not anything to back up that mill for any length of time. Tawas has little or no lumber but what is floated there.

Q. What relation have you sustained to this new company since its organization?

A. I have merely lived with my son, and have been ready to do any errand as any errand-boy would do for them.

Q. Your sole occupation since the formation of the concern of Cunningham, Robinson, Haines & Company has been working for that company?

A. When I worked at all it has been. I speak in regard to the amount of improvements from having aided in doing considerable of it myself.

Q. Have you had access to their books?

3410 A. I never seen the books—inside of them. I saw them the same as I see this gentleman's. I have never read a column or page of one of their books.

Q. Are you not engaged now in shipping men up there for the winter's work?

A. I am.

Q. In what way do you receive pay for your work for this company?

A. If you will ask this gentleman you will confer a favor on me; they have not yet paid me a dollar. I have no agreement or contract with the concern for compensation for my services, and, I will

add, no probability of getting anything if I trust to their profits. I have never seen the articles of copartnership.

Q. How happened you to go to Buffalo at the time the Buffalo agreement, so termed, was formed?

A. The first I knew of the sale of this property by Oliver was told me by Cunningham, and I found out in that inquiry there was a heavy chattel mortgage on the premises, and I sent letters and I went to see if I could not get him to take an interest, so as to cover my boy's share of that mortgage. That was my motive, and I suppose I stayed there until I wore them out. I did not succeed; I totally failed. And I asked him the same question in Mr. Duffield's office when this machinery was contracted for, and he again refused to have anything to do with the concern.

Q. Did you buy the Wayne mortgage and sue Oliver?

A. I did; and recovered judgment against him.

Q. Now, I ask you whether from the beginning until now you have not been constantly personally interested in the man-
3411 agement of that property at Ossineke, and whether you, from the beginning of negotiations with Oliver, have not devoted your time and your thought and your money to the lumber business at Ossineke?

A. I have done no other business during that time.

Q. Do I understand you to testify that during all the time you have been so employed, and have had no interest in the property of that concern as a partner?

A. Yes, sir; I make that positive assertion; neither as a partner or anything else. I have never received a penny of their money for my support.

Q. I understand you, then, your position has been that of a laborer?

A. Yes, sir; whenever they wanted me, even to logging slabs. I have helped them with my own hands build a great deal of railroad track and improvements, and speak of them all from my own personal knowledge.

Q. When did Hawkins first talk with you about the written proposition made by Oliver to put the property in the hands of Cunningham?

A. I never heard a word of the kind before. He never talked to me. It is all new to me.

Q. How long did you talk with Cunningham before he took the bill of sale and the deed of the property up there?

A. It could not have been but a very little while, for almost the first conversation I had with Cunningham was to the extent that he had got a deed of the property.

Q. Who told you to go to Buffalo afterwards?

A. Nobody.

Q. How happened you to go to Buffalo at that particular time?

3412 A. The same as if I happened to meet you going to the post-office now.

Q. Do you mean to say you met the mortgagees and creditors and Oliver and Cunningham at Buffalo by chance?

A. I was nearly a month trying to meet these men to save my boy from this mortgage.

Q. You were in Buffalo nearly a month trying to get Cunningham to save him?

A. No, Hunt.

Q. You thought that would get your son off?

A. Yes, because we hadn't the means of meeting it.

Q. The object of your visit to Buffalo was to get Hunt and Eschleman and Cunningham to postpone the mortgage?

A. To hold it for the boy until it could be worked out. I wanted to get Hunt to take some interest with the boy and help work the thing out, and I tried the same thing on Eschleman and was refused by both.

I went to Buffalo after Cunningham took his deed of the property.

Q. How many interviews did you have with the mortgagees in Buffalo?

A. I went and boarded with them, at least stopped at Hunt's house. I can't say how long. I don't think to exceed a month.

Q. Did you talk about this matter all the time pretty much?

A. No, sir; no man that tries to do business will do that. I
3413 went round the country and enjoyed myself with them. But that was the whole object of my visit; that drove and kept me there.

Q. When did you find Cunningham had assigned his interest in the mortgage to Hunt and Eschleman?

A. I have no recollection of anything about it. You say it is so, and from that I should infer it was so.

Q. Do you know, except from my question?

A. I know nothing about the matter.

Q. Have any of Oliver's debts or liabilities, or any mortgages upon that property ever been paid up to this date to your knowledge?

A. I don't know what the business has done, or what they do with their money.

Question repeated.

A. Not that I know of.

Q. When did you first hear that this first purchase-money mortgage was going to be foreclosed?

A. When I got a notice of it from the office of Mr. Duffield.

Q. Do you feel the same fear in regard to your son's interest being cut off in the property now by the foreclosure of the mortgage as when you first went to beseech Hunt not to do it?

A. I see no difference.

Q. Apparently, your son is going to lose all his interest in this property?

A. I so understand it.

Q. Do you feel bad about it?

A. I do.

3414 Q. Have you been to beseech Hunt to stop the foreclosure?

A. I have not, and don't intend to. I failed too utterly at first to ever ask any more favors of him.

Q. Do you still hold the Wayne mortgage against Oliver?

A. I do.

Q. Have any of the parties to the Buffalo agreement ever offered to pay it?

A. They never have, neither principal nor interest. I don't think I have ever talked about foreclosing on them. I never have applied for principal or interest to Cunningham, Robinson, Haines & Co., because I thought I would take what I could get of Oliver first. I think the mortgage is good for the debt. That, I think, is safe, and out of this wreck.

Q. You think Oliver is good for his debts yet?

A. No, sir. I would not give him a quarter of a cent on the dollar for what he owes; at least, I would not give anybody else.

Q. Are you aware of any consideration which Cunningham, Robinson, Haines & Co. have ever paid for that property up there?

A. I know nothing of their business at all.

Q. Are you aware of any valuable thing which Oliver has ever received from the present incumbents of that property for the property?

A. I think Oliver told me he got $10,000; he valued the land at $10,000, and he got $1,000 an acre.

Q. When you went to Buffalo to beseech Hunt not to foreclose, what did Hunt agree in regard to that matter?

3415 A. Not anything.

Q. Your object was to induce him to take an interest in the property so as to help George work off the mortgage?

A. Yes, sir; so as to lesson George's interest there, and to get rid of the debt.

Q. Who co-operated with you in that?

A. Not anybody. I had the cold shoulder here and all round.

Q. Do you mean Cunningham gave you the cold shoulder?

A. Yes; I mean to say he never gave me a particle of help. He never acceded in any way or shape to my requests, nor held out the smallest inducement or the smallest promise that he would. I want to be distinct on that.

Q. Didn't you and Hunt talk over the matter in this way; didn't you say to Hunt you thought Oliver a poor manager and the sooner you got rid of him the better; and didn't Hunt agree; and didn't you consider what plan you should adopt to get him out?

A. I did not; I never wanted him out. I wish to God he was in there now and I had my money.

Redirect examination:

Q. Is there not a boarding-house up there?

A. Yes, sir.

Q. Haven't you had something to do with looking after the boarding-house for Mrs. Robinson?

A. Yes, sir; she boards me for nothing and I help her; that is part of my business.

3416 Q. In reference to this shipping of men, have you been requested by any body to look after men?

A. Yes, sir; my son was about starting to come for the men himself, but he found himself almost blind, and asked me at the eleventh hour to come in his place, and that is the reason I am here.

Q. Are you under written instructions to look after men for him; didn't he write to you to do this very thing; didn't that written instruction direct you to send up men?

A. Yes, sir; and I will read it if the court wishes.

Q. Your business, then, about that place has been that of various characters, but have you ever had anything to do with the management and control of the partnership?

A. No, sir; nor even business matters; Oliver had a foreman there; that was his business; and during the whole time I was there I never crossed his foreman, this man (referring to some gentleman in the room), and my son has a foreman there, and I never crossed him.

Q. What is your trade?

A. God only knows; originally cabinet-making, latterly finishing; engineer (last year I ran a locomotive), and building cabinets like this.

(Reference was made to the desks in the office.)

Recross-examination:

Q. Have you any interest in this litigation?

A. Not a particle.

Q. You are a party defendant here?

A. This is the first time I knew it.

3417 Q. If you had no interest in the cause, why did you appear with Mr. Duffield while Oliver's witnesses were being examined?

A. I am glad you asked that.

Q. Was you ever served with any process?

A. No, sir.

Q. Now, why did you appear with Mr. Duffield when Oliver's witnesses were being examined?

A. I brought him down here and paid him two dollars a day, and Mr. Duffield was taking so much of his services away he went off, and I got him back again as soon as I could.

Q. When Oliver brought him here you appeared with Mr. Duffield, and appeared to be interested in the matter?

A. I would not swear what brought me here; I think it was to get some steam packing, and Mr. Duffield was trying to collect a claim for me on Lake Michigan; I went up to see Mr. Duffield on some private business, and he invited me to come down and hear this testimony, and that is all the testimony I ever heard, and don't know now what it was about, and what the motive for giving the testimony was.

H. M. ROBINSON.

3418 NOVEMBER 1, 1871.

MALCOME MCDONALD sworn for defendant.

Examined by D. B. DUFFIELD:

Q. Where do you live?
A. At Ossineke.
Q. Will you please state when you went there first and became acquainted with, or connected with, the works known as the Devil river manufacturing property there?
A. I went there in the fall of 1865 first.
Q. In what capacity and how long did you stay?
A. I worked there as a millwright in the winter of 1865 and '66.
Q. For whom and how long did you stay?
A. For David D. Oliver. I left in May, 1866, in the spring.
Q. When did you go back?
A. I came back to Devil river in 1869, in August.
Q. How long did you stay the last time?
A. I stayed there until the 1st of November, 1869, and went away.
Q. Did you go back again?
A. I came back in February, 1870, and have remained there since.
Q. What position did you hold with respect to that property in 1866, '69, and '70, and what position do you now hold in respect to it?
3419 A. I worked there in the first place as a millwright, by the day. I worked by the day until February, 1870, and then I became foreman there.
Q. When you say you became foreman, will you state what duties that involved and the supervision of what departments of that business?
A. I superintended the manufacturing of lumber, and the taking out of logs, and the shipping of lumber, and managed the men.
Q. What about the woods?
A. I located the lands for camps and relooked lands.
Q. Have you any acquaintance with that property in all its branches, including timber lands?
A. I am acquainted with the property; that is, I have been all through it. I know it pretty well.
Q. Including timber lands?
A. Timber lands and the whole property at Ossineke.
Q. Will you state what, in your judgment, was the value of the water mill in '67, '8, '9, '70, & at present?
A. In my judgment the water mill was not worth anything.
Q. Can you say why it was not worth anything?
A. I supposed the mill was condemned when I came there in 1868. It ought to have been condemned before I ever saw it.
Q. Why?
A. It was old.
Q. How old?

A. I cannot say how old it was. It was a dilapidated concern from the first time I saw it.

Q. How was it dilapidated?

3420 A. It looked as if it was neglected. The whole thing looked as though it was a failure right along, and it was given up, and I understood it to be so. Oliver told me he was going to build another. He did not pay me when I left his service, and afterwards he came and paid me, and told me he was going to build a steam mill, and the impression that he made was that he wanted me to go back and help build it. He had given up the other, because he had never made anything by it. It was a failure, and he was going to get up a good mill, as good as there was in the country. He showed me some letters that he had, where he had bargained for the machinery for the steam mill, and he was going to run the business right along on a different system than it had been under.

Q. What was the condition of the machinery, the frame, and the general structure of the mill in '68 and '69?

A. I could not tell you how it looked. I never examined it.

Q. I mean as to the soundness of its timbers?

A. It was rotten. The flumes were rotten, and the mill was rotten; the sills and the foundation were rotten.

Q. What was its capacity for sawing in those days?

A. It did not have any capacity. It was no better than an old barn.

Q. When?

A. In '68 and '69.

Q. Was it not running at all then?

A. No, sir.

Q. How was it in '67, then?

3421 A. I cannot tell how it was then. I was not there in '67, but I judge from the looks of things that it was better.

Q. Did you ever run it yourself?

A. Yes, sir; I run it in '66, a short time after we fixed it up. I fixed it up in the winter of '65 and '66; I ran it, and I quit it, and I left the place in disgust. Oliver was away, and I quit the whole thing because I saw there was no money in it.

Q. Disgusted with what?

A. With the mill and the business. I made up my mind I would not get anything for what I would do, because I did not see any money in the business.

Q. What was the largest log that mill would saw in its best state?

A. The logs that I saw them cutting were very small logs, principally Norway.

Q. What was the largest log you ever saw go through in diameter?

A. I do not suppose I ever saw a log cut there two feet and a half in diameter. I could not say, I am sure. Timber ran very small that spring. I should judge that would be the biggest log in the whole lot.

Q. Could it not cut a three-foot or a four-foot log through?

A. You might go to work and cut a log down with an ax, so that

they could cut it. It could not be sawed unless it was cut down with an ax.

A. Could a three-foot log be sawed?

A. No, sir; it would have to be chopped in order to pass through.

Q. Are you familiar with the timber upon that tract?

3422 A. Yes, sir; I have been all through the limits.

Q. Are you familiar with those tracts of the Ossineke property there which have been cut over?

A. Yes, sir.

Q. Will you state, if you please, what, in your judgment, has been the manner in which that timber has been cut, with reference to economy and prudence, and general good judgment in working up the timber?

A. It has been managed since I came there as economically as possible—as economically as any parties would cut timber under the same circumstances in woods of that kind. They are trying to get off all the timber that is there. What they do not get off one year they get off in another.

Q. Has there been anything like wastefulness or extravagance in cutting it—in cutting out the big logs and leaving others standing?

A. Not since I came there.

Q. What period of time would that cover?

A. Since 1868 to the present time, I think. I have seen what they cut. I was through the woods in '69 that they cut in '68, as closely as any parties would do it.

Q. When were you last over that property?

A. This last summer.

Q. What, in your judgment, was the amount of standing timber on it then?

A. I think if I was to estimate the country there would be about 20,000,000 feet standing on the limits that I have been over.

Q. What would the stumpage of that be worth?

3423 A. I don't think any of it would be worth $2, and some of it would be worth less.

Q. Do you know any stumpage higher than that being paid [illegible]?

Not in that part of the country.

bout Alpena or Ossineke during the years '67, '68, '69, and '7[illegible]

know there has been $2 paid for stumpage in Alpena, and I here has been $3 asked for stumpage there this fall. I do not how true it is.

Do you know of any such being paid?

I do not know of anything of the kind being paid to anybody. ave not been directly interested with anybody that has paid for umpage, only what I know from hearsay.

Q. Would you not, from the way you are situated—connected with the timber that was got in—been likely to know whether any such stumpage was ever paid at Ossineke?

A. I think if there was any such stumpage paid I would have heard something of it.

Q. When you put this standing timber at 20,000,000 feet, did you speak after having made what you deem a careful examination with reference to the amount of it?

A. No, sir; I did not go over the land with the object of examining it or estimating it; but from what I could judge, and from the country—being used to woods—I would judge that is what was on the country. I did not count the trees to get the estimate.

Q. What was your object in going through the woods and inspecting the timber?

3424 A. My object was to locate camps with a view of how much timber we could get off a certain place to keep the camps going for the winter.

Q. Did you or did you not at that time have your attention directed to the quantity of timber?

A. Yes, sir. I felt an interest in the whole country because of being there. I wanted to see how much work there was yet to be done. My object was to find out what work there was to be done in the country and what prospect there was there for myself. I went there in behalf of the company to find out what was there. I was paid by the company to see to it.

Q. How much lumber was cut off from this property during the years '69, '70, and '71?

A. I do not know just how much timber there was cut, but I think in the summer of '70 we cut about 5,000,000. It may be we cut more and it may be less. I think it would be about that.

Q. How about '69?

A. I do not think there was as much timber cut in '69. I was there a part of '69. The mill did not run as successfully in '69 as it did in '70, and for that reason I judge there was not as much timber cut.

Q. How was it this year?

A. I think between three and four million cut, and about a million and a half was hung up on the rapids that we could not cut. I have shipped pretty much all the lumber, and I judge so from some of the cargoes.

Q. Did you have charge of the shipment of this lumber?

A. Yes, sir.

3425 Q. As foreman?

A. Yes, sir; but I have not figured the amount.

about the amount of lumber we have taken out, according best judgment. I judge by the amount we cut per day.

Q. What was the proportion of white pine and Norway which cut during the time we have been talking about—'69, '70, and I want to know whether it ran largely in Norway?

A. In '70 I think it ran about a third Norway, and this year ran pretty well Norway; it ran a good deal more so.

Q. Is that the best timber, or second best, or what?

A. It is such timber as is growing up there.

Q. Is it poor or first-class timber?

A. It is very common timber.

Q. You say this Norway was all common timber?

A. Yes, sir.

Q. What quality was the white pine?

A. It was common timber. The whole timber that grows there runs common.

Q. How was that mill run in '65 and '66 with reference to profitableness by Oliver?

A. It looked to me as if there was no profit in it.

Q. Was it a success or not?

A. I judge it was not a success.

Q. Why?

A. The mill and the management of it was a failure.

Q. Who was the manager?

A. There were a good many managing it; it seemed to be managing itself; Oliver was the responsible man.

3426 Q. You speak now of the years '65 and '66?

A. Yes, sir.

Q. How long a period of time could that mill run in a year—with reference to water, I mean?

A. It could not run more than half a year to run profitable. In the winter time, along in January and February, the water would be scarce, and along in the summer time it would be scarce; and when the water is high in the spring of the year the backwater would injure the mill.

Q. Could these two mills have been run advantageously or profitably at the same time after the steam mill was erected?

A. I think not.

Q. Why?

A. The dam that runs the water mill is required for the purpose of getting the logs down to the other mill. The river is very small, and the water is required to float the logs down to the other mill and keep the other mill running. The steam mill has a large capacity and it takes a great many logs. The room that is in the river is so small it would hold a very small quantity of logs, and it would require the dam above to hold logs for the steam mill, and would have to open the dam so often.

ther Q. In that way they would interfere with each other?

A. Yes, sir; you would have to let the water in the mill-dam go

Q. A to let the logs out of it.

'70? Q. Then suppose you wanted to run the water mill?

A. You could not run the water mill when you let the water hear to.

know Q. Is it a possible thing to run those two mills simultane-

Q ously?

A I think it is impossible to do it wisely and profitably.

I h

st Cross-examination by Mr. RUSSELL:

Q. Did you come here on purpose to testify?

A. I came to go to Canada. After I got here I understood I was to come here.

Q. Who employed you to go to Ossineke in August, 1869?

A. George Melville employed me; he was the one that spoke to me, and I went there.

Q. How came you to quit the 1st of November?

A. Because the mill had shut down along in October; the first of October I think it was, and I worked on building a dam until that time, and then I went out of employment.

Q. On which branch did you build the dam?

A. On the South Branch.

Q. On the North Branch are there not lakes which serve as reservoirs without the necessity of building dams?

A. No, sir; I do not think they could be used as reservoirs until they are dammed.

Q. Who employed you to go there in February, 1870?

A. George Robinson wrote me to go, and sent his teamster down with a team for me.

Q. Where were you in the interval from November to February?

A. I was in Bay City.

3428 Q. In what capacity were you employed to go there in February?

A. I was employed to go out to take charge of the mill and the men, and make lumber.

Q. For whom did you work?

A. For the firm of Cunningham, Robinson, Haines & Co. That was the firm I understood I was working for.

Q. Do you know who compose that firm?

A. I understand Cunningham (who was out there shortly after I was there), and Mr. Robinson and Haines and Ranney. They have all been up there, and they told me they were the men, and I have reason to believe they were, from the way they were acting together and the way they controlled me.

Q. From whom did you get your orders?

A. I took my orders from Geo. J. Robinson. He was the man I went to for my orders, and I acted according to his instructions.

Q. From whom did you get your pay?

A. Geo. J. Robinson is the man that paid me. He gave me a check once on the firm—Cunningham, Robinson, Haines & Co., Buffalo, and he most always paid me with money. As a general thing, he paid me himself.

Q. When you quit there in May, '66, why did you leave?

A. I left because I was disgusted with the business and the way it was managed, and I saw there was no money in it staying there. The probability was I would get nothing for my labor.

Q. Had you not been paid in full?

3429 A. No, sir; I left without any settlement, because there was no prospect of getting anything for what I was doing.

Q. You were paid subsequently.

A. I was afterwards paid.

Q. Can you give the date of your payment?

A. I cannot. I was paid in the winter of '67.

Q. By whom?

A. By Oliver. He gave me a check on Preston, of Detroit.

Q. Where did he pay you?
A. At Alpena.
Q. You speak about the sills of the water mill being rotten. Did you ever personally examine those sills?
A. Yes, sir.
Q. When?
A. In '65 and '66. I have been through the mill. I never examined them since.
Q. Will you testify the sills of that mill were rotten in '65?
A. We have taken out some sills. I put in some new timbers myself.
Q. The rotten portions then were replaced with sound timber at that time, were they?
A. We had to do it in order to make a fixing of it.
Q. The mill was repaired in '65 and put in running order, as it was considered, was it not.
A. It was repaired as much as it could be practicably.
Q. That mill sawed all the lumber that was sawed until the steam mill was built, did it not?
A. I believe it did.
3430 Q. And the whole business of manufacturing lumber that was done with that mill up there to the date of building the steam mill, was it not?
A. I do not know any other mill it was done by. I was not there. After I left I do not know how they cut lumber.
Q. Can you tell how many million feet it cut per annum?
A. I cannot. I judge it could not cut a great deal; not a great many million feet.
Q. But you have no knowledge on the subject?
A. No, sir. I have no knowledge on the subject.
Q. Can you describe the lands which you personally visited at the Devil river property so-called?
A. I think I could.
Q. Will you please to do so?
A. I cannot go over them in forties. I have been on 30, 35, 22, 8, 9, in town. 30, 35, 36, 27.
Q. You went through these lands as I understood, for the purpose of locating camps, and not for the purpose of making an estimate of the number of feet of timber?
A. I went to look at the timber and see how to cut roads. Camps had been built on some of them, and I went through to see if those camps would answer to lumber on. Some of the same lands had been lumbered off from already.
Q. You were not called on to make an estimate in writing?
A. I was not.
Q. And did not?
A. I did not.
Q. This examination, such as it was, which you have made, was made in what year?
3431 A. Made this summer and this fall. I went over the lands with a view of looking at them. I thought it was likely we

would remain there some time, and I wanted to see if there was anything to do. If there was not, I had other places that I wanted to go to. Other parties had offered me inducements, and I thought if they had anything better I would go, and if this company did not have a good enough thing I would not remain, and I was not satisfied with the country.

Q. Before this summer you never made any such examination?

A. I did not; but I have always thought from the looks of the country and the way timber was on the country, that the prospect was not very good.

Q. How many days did you spend in the examinations you made this last summer?

A. I cannot tell just the number of days. I have been there a good many days, week after week, through the woods.

Q. Can you give an estimate of how many continuous days, or how many days in the aggregate, you have spent in the examination?

A. No, sir. I would be part of the day in the woods. I never stayed in the woods over two days or two and a half days.

Q. Have you had any experience in land-looking?

A. Yes, sir. I understand timber lands.

Q. But your calling is that of a millwright, I understood?

A. My calling is a lumberman.

3432 Q. Have you ever been in the habit of looking lands for yourself or for others?

A. I never located lands for others.

Q. Have you for yourself?

A. No, sir. I never did—not in this country.

Q. Have you ever been in the habit of estimating the amount of timber to a given quantity of land?

A. Yes, sir. I have done that. As a foreman I have been in the habit of doing that. I have done it in Saginaw.

Q. What was your object, in your examination of these lands, in locating camps? What principle did you locate your camps upon? What determined the choice of your location of each camp?

A. Some camps had been located before I ever went there, and my object was in seeing whether these camps would answer to lumber on, and whether there would be lumber enough to go through the winter, and how long I could lumber out of one camp. Of course some of the timber had been cut over, and it would have to be recut to see if those roads that were put down by other parties were correct. Men in my capacity differ in opinion upon the way roads are laid out.

Q. What do you mean by saying some of the lands had been cut over and had to be recut?

A. As a general thing they do not cut pine lands the first year altogether. Very often they cannot do it, and they can use the same roads to recut the timber.

Q. Do you mean with reference to these lands that the better class of timber had been cut out?

3433 A. No, sir. I mean that the timber was cut off as it could be cut off with the skids. There were some places where they cut roads through and the timber would be too thick, too heavy, to get on skids. It would be required to build too many skidways, and they would leave some timber standing to put on the same skidways—to save building skidways.

Q. Did you find in your examination of last summer that in many tracts the better part of the timber had been cut?

A. No, sir. I did not. I found that the timber was cut as most any people would cut in that country—such a country as that is.

Q. Did you not find that white pine had been cut and Norway left?

A. No, sir. I found there was just as much white pine standing as Norway standing, as a general thing. I could see it was cut with no view to pick any timber out and leave other.

Q. How many camps have you located for the coming winter?

A. I did not locate any; we are working in the same camps we were in last winter, for the coming winter—making use of the same camps and making new roads, and we are now cutting timber off the same lands that we cut it off last winter.

Q. How many camps were there last winter?

A. Two camps.

Q. On what sections were they located?

A. One camp was located on 26, town. 29, 8 east, and the other on section 8, 29, 8 east.

3434 Q. You say the first summer you were connected with the property about 5,000,000 were cut—what is the basis of your opinion?

A. I judge from what the mill was doing and the way the mill was cutting, and from the time I was there. I have no other way of getting at it.

Q. You say you had charge of the shipment of lumber since you went there in 1870?

A. I have had charge of the management of the men that shipped the lumber.

Q. Where has the lumber been mainly shipped?

A. To Buffalo. There has been only one cargo shipped to any place else since I went there, to my knowledge.

Q. Who were the consignees?

A. Cunningham, Haines & Co.

Objected to as not cross-examination.

Q. Did I understand you to say that it's your opinion it is impossible to run the two mills together, or merely that it is not profitable?

A. It is not impossible to run them, but it would be very foolish, in my opinion, to run them together.

Q. You consider it would be bad management?

A. It would be disastrous.

Q. How many days a week does it take to run the logs through the dam?

A. We make use of that dam sometimes every morning and every night in the summer time—every day nearly, or every other day, and very often every day. We make use of it now when we are running the mill.

Q. Are there not long periods during which you make use of it once a week?

A. In the spring of the year, for about two months
3435 and a half sawing—when we get high water it will jam up a great many logs between the two dams, and thus we get a supply on. It throws the logs all up on the banks, so that we have to flood the water from the other dam to get them out. The main channel of the creek we soon saw out, and then we have to float these with the other dam to get in the logs; we have to make use of that every day.

Q. Would there not be many weeks at a time when the sluice-boards are open and the logs running all the time?

A. No, sir. It is only a little while in the spring, and a day's running, or less than that, would stop up the whole river—jam up between the two mills, and then we could not run the mill at all when those logs are stuck there. Half a day's running would fill up between the two mills.

Q. With whom have you conversed with reference to the subject-matter of your testimony before testifying?

A. I have conversed with no one about it. When I learned that I was to give testimony here, I wanted to know what it was, and there was nobody able to tell me what I was to give testimony about. I have not made any arrangements. I never once thought that I would be called upon to testify in this matter at all.

Q. Have you any interest in the subject-matter in controversy?

A. I have no personal interest in it whatever.

Q. You are not at present in the employment of Cunningham, Robinson, Haines & Co., I suppose?

A. Yes, sir.

3436 Q. And expect to be during the coming season?

A. I expect to be during this winter. I do not know that I shall be any longer.

Q. Do you expect to have charge of the business there, as foreman, the coming winter?

A. Yes, sir; if we don't fall out; that we might at any time.

Redirect:

Q. Have you any feeling as between these parties either way?

A. I have not. They stand in about the same relation to me.

MALCOME McDONALD.

HENRY B. BROWN sworn for defendant:

Q. Do you know the complainant, David D. Oliver?

A. Yes, sir.

Q. Will you look at that paper, "Exhibit M," and state whether you ever saw it before?

Objected to as irrelevant.

A. Yes, sir; I have seen that before.

Q. Will you look upon the back of it and see whether there are any marks there or writing of yours?

Objected to as irrelevant.

3437 A. Yes, sir.

Q. What is in your handwriting there?

A. "No. 29;" the words in red ink, and the words, "Dated September 5th, 1868."

Q. Will you state when you made that indorsement?

Objected to as irrelevant.

A. I can't give the date. It was made at the time I looked over Oliver's papers.

Q. Who was present at the time that indorsement was made?

Same objection.

A. My impression is, I was alone.

Q. Will you state whether there was any erasure made there of the date at any time by you.

A. I cannot tell, sir. It looks as though it had been erased and written over.

Q. Will you look at the date of that letter, also, and see whether you have any knowledge of any erasure made of the date of the letter by any one?

A. Before I answer that I will state that I presume I made that erasure myself, and wrote the figure five; that figure looks like mine, but I don't know. I can't say positively.

Q. State whether there is any erasure made in the date of the letter itself.

A. I know of none, and I don't think there has been any. Certainly none by me.

Q. There is no alteration, no erasure, nor no mark in the date of that letter made by you at any time?

A. No, sir.

3438 Q. Can you say whether that figure five is yours?

A. It looks like mine. Of course I can't speak positively.

Q. Have you any recollection of erasing a previous mark at the time you made that indorsement?

A. I have none.

Q. Do you remember the circumstance of your indorsing it.

A. No. Except that I recollect indorsing upon each paper in my file the day it bore date.

Q. Have you any means of knowing whether that indorsement is the one you originally placed upon the back of that paper?

A. I have none whatever, except the resemblance of the figure five to mine.

Q. From your knowledge of the condition of the original indorsement and recollection of the circumstance, what is your opinion as to there having been an erasure there?

Objected to as irrelavent and incompetent.

A. I judge there has been an erasure there, both from the apparent thinness of the paper and the appearance of the ink.

Q. But if I understand you, you have no knowledge of an erasure there, made by yourself, nor no knowledge of that apparent erasure made by anybody else?

A. No, sir.

Cross-examined:

Q. At the time you made the indorsements on this paper, were you acting as counsel for Oliver in this case?

3439 A. I was.

Q. There has been no erasure in the date of this letter?

A. I think not.

Q. In your judgment, has there been any erasure in the date of the letter, "Sept. 5?"

A. I judge not; there is a slight indistinctness, but I think that proceeds from the ink on the figure one being a little blurred. I judge there has been no erasure of the figure five.

(Signed) H. B. BROWN.

ERY H. TOLAND, sworn for defendants:

Examined by Mr. DUFFIELD:

I live at Alpena. Have been living at Bay City all summer. I was a witness in this case on behalf of Oliver along in July, and in my testimony stated that shipping bills were made out in the name of the Ossineke Lumber Company, according to my best recollection.

Q. State whether you have since made any investigation by which you are able to state whether that statement was correct, or whether the contrary is the fact?

A. Some bills I see here are made in the name of Cunningham, Robinson, Haines & Co.

3440 Q. Have you examined the shipping bills that were made in the year '69—through the shipping season of '69—of that firm?

A. Not all of them; I have seen four or five.

Q. Will you look at those and see whether you can find among them any that are shipped in the name of the Ossineke Lumber Company?

A. No, sir; I do not.

Q. Did you ever see a bill of lading so shipped?

A. It ran in my mind that they were frequently in that way, but I was mistaken. The bills of lading are in the writing of Winchester; he was book-keeper for the firm at Devil river, Cunningham, Robinson, Haines & Co.

Q. Were you at Ossineke in the month of September, '68?

A. I couldn't say; I was there that season; the scow Champion was there four or five times during the summer; I don't remember when the cargo set forth in those bills were shipped on her; I know her captain—Capt. White—when I see him; I do not know his

signature; I have no doubt but I have seen those bills of lading before; I think I have seen them at Devil river; I was in the store; sometimes tallied lumber on the vessels.

Q. Do you not therefore remember those shipments?

A. I could not swear to it; the scow ran a good many trips that season to Devil river; where a vessel loaded with lumber she ought to load in about two days and a half, if she got the lumber all right; if nothing delayed her the Champion would load in that time; sometimes it wouldn't be as handy as others.

3440½ Q. Do you remember whether she was there at that time or not?

A. No, sir; I have no recollection. We used always to try to get vessels off as quick as we could when they came; I was there from the summer of '67 until the third of June, '70—three years lacking two days; I was there in the month of September, '68; I know Reuben E. Gallup; am acquainted with his handwriting.

Q. Will you look on page 146 of this book of Oliver & Robinson and state whatever the entries are in his handwriting, including the dates?

A. Yes, they are.

Q. How many entries are on that page?

A. Seven.

A. September 5; the date of the first, second, and third entries thereunder is September 5; the date of the fourth is September 9.

Q. Whose figure is that?

A. I couldn't say; it looks the same as the entry; don't think I have any doubt of its being the same; I judge it to be the same; the next entry to that has the same date; the date of the next is the 10; those figures look the same as the entry, Mr. Gallup's; there is no other under that on the same date.

Q. Then what comes on that page?

A. That is Geo. J. Robinson's handwriting. A memorandum next: "In consequence of David D. Oliver's recorded sale to Henry S. Cunningham, his personal credit is discontinued on these books 3440¾ until it is made known to me how such credits are to be provided for, and whether they are authorized by said Cunningham. (Signed) Geo. J. Robinson." There is nothing else on that page. On the top of the next page 147, the date is Sept. 11, 1868.

Q. What appears under that, the first entry on that page?

A. "Know all whom it may concern that there appears on the record a sale by David D. Oliver of his interest in the copartnership of Oliver & Robinson, and that the subscriber is not advised as to its legal bearings on himself or said firm, but he saves and reserves to himself all his legal rights. And be it further known that he will retire from said firm and its business, as provided for in his articles of copartnership to which reference is made. (Signed) Geo. H. Robinson. September 11, 1868."

Q. In whose handwriting is that?

A. Geo. J. Robinson's.

(Pages 146 and 147, containing the memoranda above referred to,

are, with Mr. Robinson's consent, detached from the book and offered in evidence, marked "Exhibits A 1" and "A 2.")

Q. Did you see those memoranda of Robinson's the day they were made?

A. I thought I saw them either the same day or the day after. I can't say that there has been any change in the pages since that time. The entries of Mr. Robinson seem the same. I can't say as to the preceding entries whether they were there or were not there. I can't recollect.

(Signed) ERY H. TOLAND.

3441 GEORGE J. ROBINSON sworn for defendant.

Examined by Mr. DUFFIELD:

My name is George J. Robinson; I live at Ossineke, Alpena county, Michigan; I am one of the firm of Cunningham, Robinson, Haines & Co., and am one of the defendants in this suit.

Q. Will you state how you came to be connected with this property?

A. I became connected with it in the fall of 1867 by a purchase from Oliver.

Q. Did you visit the place?

A. I did before my purchase.

Q. How many trips did you make to that place before you purchased?

A. I made one trip up there, and spent either one or two days; I am not positive. I think, perhaps, I stopped over one night; I think I did; I am not sure.

Q. Did you go over that property immediately in the vicinity of the mills, and also over the timber ground?

A. I went over as much as one would go over in a day or two; to go over fully would require some time.

Q. Did you go over the lands that first trip?

A. I went a little way on the lands; very little indeed.

Q. Make any estimate of the timber that was upon them at that time?

A. No, sir.

3442 Q. When you closed your contract with Oliver, what was it for, what interest, and was it or was it not reduced to writing?

A. The contract was reduced to writing fully. It was for an undivided quarter interest.

Q. Where were those writings executed and by whom signed?

A. They were executed in D. Bethune Duffield's office—it was at that time—and signed by Oliver and myself.

Q. How were they executed in respect to the number of papers—duplicates, triplicates, or single?

A. They were duplicated, most of them; the contracts were duplicates.

Q. Contract of purchase?

A. Yes, sir.

Q. What other papers were drawn?

A. The contract of purchase, articles of copartnership, deeds, and mortgage.

Q. Did you ever hear from Oliver any protest or complaint against that agreement?

A. No, sir. We sat down in your office, and he and I dictated to you, and you put it down. I never heard any complaint about it until I saw it in his bill in chancery. Oliver dictated as much as I did. We sat down together and talked the thing over, as we had talked it before, and what we concluded should go on the paper we recited to you and you wrote it down.

Q. Wasn't it at my house?

3443 A. No, sir; it was at your office. There was considerable talk at your house, but the papers were made out at your office. I recollect very distinctly where you were sitting and where Oliver and myself sat.

Q. When, if ever, about the time of your purchase, was there an inventory taken of that property; was it the first, second, or third trip you made up there?

A. Oliver first furnished a memorandum of an inventory to me before I went up there, and after I purchased we wrote up—Oliver and I wrote the letter together. I believe I did the writing; we did in concert, however, whether to the book-keeper Gallup or Melville, I don't recollect which, to take an inventory.

Q. Did you take any part in that inventory?

A. I was not there when it was taken, neither was Oliver; it was done before we got up there, in the fall of 1867.

Q. Will you state what is the amount of logs you found there at the time you went up there?

A. At the time I went up I was not competent to judge of the amount of logs. They were inventoried, I think, at two millions and a half. I afterwards became satisfied there was not above half a million.

Q. How did you become so satisfied?

A. As I became familiar with the sawing, and saw how much it took to make a thousand when it was sawed, I arrived at it to my own satisfaction that there was not above that. I should not be willing to put them above half a million.

Q. Do you express that opinion from an inspection of the logs?

3444 A. From what I saw of the logs at the time and from my judgment at a time I was not competent to judge. I didn't know the difference between one million and forty millions.

Q. What amount of goods was there on hand in the store?

A. I didn't make an inventory; didn't know anything about what goods there were, except that Gallup and Melville told me they were very much over-estimated in value. They were put at old prices years ago, and that property had depreciated a good deal. I know a good many of the goods they had sold right along far below the cost mark, and they were marked too high on the inventory. I think they were marked at least 50 per cent. above what they were

really worth, because we sold them below what they were on the inventory—a good many of them.

Q. You cannot state, then, positively?

A. No, sir.

Q. Do you know whether there was eight thousand or not?

A. There was 8,000 on the inventory; I don't think there was really over six; a good many were old goods; some on hand today.

Q. What firm was formed by the articles of copartnership?

A. Oliver & Robinson.

Q. Who were partners of that?

A. David D. Oliver and myself.

Q. Was there anybody else?

A. No, sir.

Q. Will you state whether H. M. Robinson was a partner or had an interest in that concern?

3445 A. No, sir; he had no interest whatever as a partner; he never had, and has not to this day.

Q. Will you state what his relations with this business were?

A. He furnished me with a large portion of the capital I put in there.

Q. I mean in regard to the direction of the business, whether he directed you, and managed the business and that sort of thing; whether he was the man in charge?

A. No, sir; I was the man in charge; he loaned the firm money, and had a chattel mortgage, and afterwards guaranteed a contract, and, I believed, furnished some more money, or something, to Oliver, and took some additional security, and among the rest a sort of a lien upon Oliver's interest. Oliver at that time constituted him an agent, as he informed me, and as he represented by a card that he got up at that time. But I requested him not to act as an agent beyond what he was requested to do from time to time.

Q. What did he do in connection with the business?

A. He never did anything that I know of, except under the immediate direction of Oliver or myself. We wrote to him from Ossineke.

Q. Did you use him as an agent? Was he agent for the firm?

A. We constituted him agent from time to time to do work for us—to look after certain things; for instance, we wrote to him to make certain contracts for us, and he acted in that capacity and made the contracts.

Q. As to the superintendence of that business, management
3446 of the men, the payment of the men, ordering of their work, etc., did he or did you have charge of that?

A. I had charge of it. I requested him sometimes in my absence to look after things, and see that they were straight when we were not there, but more as foreman than agent, to see that things went on properly.

Q. Do you know of certain contracts that Oliver made after your partnership, and whether they were advantageous to the firm or not?

A. He made certain contracts, and I considered them disastrous to the firm.

Q. Why?

A. For the reason that they tied up our lumber when we couldn't afford to carry it. We were embarrassed for means. I knew that we couldn't stand it to carry on the business and carry the lumber, too; and the more particular objection to that was that the proceeds of the lumber largely, and I considered almost wholly, were to pay Oliver's personal debts to the Haineses.

Q. Did you have any interest in the contract of Haines and Oliver of September, '68?

A. I had no interest in it beyond a desire that some arrangement might be made whereby I would swap Oliver for some other partner. I had a desire to see a change brought about. I mean the Haines and Oliver contract referred to as written by me at Lockport.

Q. Some testimony has been given by Mr. Melville in regard to a plan or scheme of yourself and others of excluding Oliver from that business. Will you state what there was of that?

3447 A. It is an entire fabrication. There is not a word or shadow of truth in it.

Q. State, if you please, whether you had any knowledge of his arrangement with Cunningham, in connection with what is called the Cunningham contract; whether you were advised with by Cunningham about it.

A. I never knew anything about it until the Saturday in September, '68, which came on the 5th. I recollect it very well. Cunningham, myself, and some others went out on Sunday and it rained. That Saturday Oliver and Cunningham came together in the office where I was. Mr. Gallup was there at the time, and they asked Mr. Gallup to retire, and he did so. I can't say which used the language, but they both, Cunningham and Oliver, talked about it; said they were negotiating a sale of Oliver's interest to Cunningham.

Q. Was this in your presence?

A. Yes, sir. It was to me. They said Cunningham was negotiating a purchase of the Oliver interest in the Devil river property—the whole concern—and before he did anything about it he wished to ask me whether it would be agreeable to me or not. At the time I was very desirous of some change that would better my affairs there, and I so informed Cunningham, and that I would be very glad to accept him as a partner instead of Oliver. I also said to him at the time, I didn't want to hurt Oliver's feelings by talking in his presence, but it was plain to us we couldn't get along together; there was no probability we ever should. I didn't like his way of doing business, and he probably didn't like mine, and for that reason I was desirous of a change. He said the thing

3448 hadn't been talked of fully. Before he did talk he wanted to know whether it was agreeable to me or not, and that he would think the matter over and talk it over with Oliver, and would see me again before he went away, and perhaps might arrive at some conclusion. That was the end of that conversation. The next day was Sunday, the 6th. Oliver and Cunningham went off and left me in

the office. I expected to hear from them again, but never did, about this proposed arrangement. Then Melville called my attention to the town clerk's office. I went there and examined the clerk's books (that was on Tuesday, the 8th), and I found a record there of Oliver's sale. That was the first intimation I had of it, and I became very much alarmed. I felt that they had run off and left me, and in a state of agitation I went to the books and made first the entry under the date of the 9th there on page 146. The previous entries were all there, and I made the entry under Mr. Gallup's date, not under mine; his date is the 10th.

Q. What day of the month was that entry made?

A. I have no doubt it was made on the 10th. It was made before the 11th, and I know it was not made before the 9th. I judge from the date on the book it was made on the 10th. The more I thought about it the more agitated I became, and I made another entry on the following day—thought I hadn't covered it all—and that appears on page 147. It is signed by me and dated by me. Also, at that time, after I had made these entries and had written a letter to George Hawkins, dated September 10th (marked "Exhibit A").

3449 After I had made these entries on the book I wrote a letter to Mr. Oliver, referring both to these entries and to the day-book entries as follows: "Ossineke, September —." The balance is mutilated and altered. I cannot read it all; the first figure there doesn't appear to me like any figure I ever saw. This is the paper attached to the deposition of Mr. Oliver, marked "Exhibit M:"

"David D. Oliver, Esq.

"DEAR SIR: Your attention is called to entries made by me in day-book; also to a letter to Mr. Hawkins. Should be glad to see you in Detroit.

"Respectfully,

"GEORGE J. ROBINSON."

At that time I was about leaving for Detroit.

Q. State whether that letter has been altered at all.

A. I am sure the figure is not as I left it. I don't think the five or the one eight is as I made it. The "68" (sixty-eight) is. I always make a figure five very plain. That letter was not written before September 10th. Cunningham was not there then; he had left.

Q. What is your impression about the date of that letter?

A. From my recollection I presume it was written on the 10th. That is my memory of it, and that would appear to be in harmony with other fixed facts that are here. I wrote a letter previous to that to George W. Hawkins ("Exhibit A"). The date of that is Sept. 10th.

Q. How long previous to the other letter did you write that?

3450 A. It might perhaps have been on the same day, and it might have been as much as two days after. A very short time after writing this letter I came to Detroit. I wrote this letter for the reason that Hawkins was in the woods. I was desirous

of seeing him, but couldn't see him, and wanted him to understand something, and I wrote this letter, left it for him, and came away.

Q. Did you ever give your assent to this sale or transfer of Oliver's interest in that concern to Cunningham?

A. Never beyond what I have already said.

Q. At the time?

A. No, sir; it was done without my assent or knowledge.

Q. Is that the reason why you put those entries on that book?

Objected to as leading.

A. It is.

Q. Did you ever consent to Cunningham or Oliver to receiver Cunningham as a partner in that business in his room?

A. No, sir.

Q. Did you ever assent to this arrangement that he had made with Oliver at the time of it; the trust matter?

A. No, sir; I never assented to it; I didn't know anything about it.

Q. When did you first become acquainted with the existence of the papers that passed from Oliver to Cunningham?

A. My first intimation of the fact was the finding or having my attention called to the records in the town clerk's office; the record of the bill of sale from Oliver to Cunningham of his (Oliver's) interest in the property.

3451 Q. Did or did not Hawkins assume control of the business thereafter?

A. I took it at the time that Hawkins was disposed to assume some control in behalf of Cunningham; he had gone into the woods, and I was desirous of going away; and, under the belief that he was disposed to assume some control, I wrote him this letter, which is marked "Exhibit A," dated Sept. 10.

Q. I ask you whether he did, as a matter of fact, assume any control over you and over that business, to your exclusion?

A. No, sir; not as a matter of fact; I came away immediately after this letter; he followed me to Detroit; I think he was down within a day or two after I came, and I met him in Detroit; I have letters on record here which will show that fact.

Q. Can you tell on what day Cunningham arrived there, and what day he left?

A. I don't know whether he arrived on Friday or Saturday; not before Friday; Saturday was the 5th; he may have arrived on the 5th, or possibly on the 4th; my impression is it was on the 5th; I think the 5th was the first I saw of him.

Q. When did he go?

A. The last I saw him was on Monday or Tuesday, the 7th or the 8th; I think it was the 8th.

Q. About the time he was going away?

A. No; I didn't see him when he was about going away; I expected he and Mr. Oliver would call on me and talk the matter over further, but I didn't see them; when I came to know anything about it he had gone.

3452 Q. Do you remember the circumstance of his arrival, so as to be sure of the day?

A. I was at Ossineke. I knew of his arrival at the time of it, but I don't think I saw him immediately; but shortly after his arrival he came into the office with Oliver, either the same day or the next day. I knew at the time of his arrival, but I didn't see him arrive; didn't see him come into the place; I was aware he was in Oliver's house; I might have seen him through the window.

Q. Did you see these papers that was executed between Oliver and him before they were executed?

A. I never have seen the papers that I recollect of, only the records of them—I didn't see them at the time, certainly.

Q. When did you go back to Ossineke? You say you came down to the city.

A. I was down here some time. I have not undertaken to refresh my memory, and I don't recollect when I went back. The only thing I ever did with Hawkins in relation to Oliver, Cunningham, Eschleman, or anybody else was one time one of the boats from Detroit or Bay City was in at our dock, and Hawkins and Oliver were going off together on that boat. That was in the year 1868. I don't recollect the exact date, and Hawkins said to me (Mr. Oliver, I think, being close enough to hear—he was nearly by his side; I don't know whether he heard it or not)—he said to me: "Have you any word to send to Hunt?" My answer was very short. I said: "Not a word." I didn't feel very friendly towards him. He had annoyed me a good deal about having an "elephant," and he

3453 was continually putting up scare-crows without telling me what was the matter, and it annoyed me.

Q. At the time Cunningham was there was the steamer Champion at your dock?

A. The scow American Champion was there before Cunningham went away. She went away on the ninth of September. I think she came on the seventh. She carries something under two hundred thousand, and I don't think we were ever to exceed two days in loading her. Two days would be the usual time. She would be entitled to demurrage if we detained her; and I don't think we ever paid her demurrage. Cunningham was not there when she had her bill of lading made out; that is, I didn't see anything of him when she was about to depart.

During the year '69 the entire product of our mill went to Buffalo. There was no cargo shipped anywhere except to our folks at Buffalo. I don't know where it went from there.

Q. State what you know about the adoption of a name like the Ossineke Mill Company, what it was for, and when it originated?

A. We had lost a good many of our bags and tools, and were desirous of marking them in some way so that it would be patent to everybody where and to whom they belonged. I gave this man Perkins over here an order. He received credit for it on his books; charged it to Cunningham, Robinson, Haines & Co., and they paid him for it. It was used for marking bags and some tools. We still use it.

3454 Q. Was there any copartnership ever organized under that name?

A. No, sir; there never was. I had great big letters on the books.

Q. Was that ever resorted to by you as a means of evading Oliver & Robinson's creditors?

A. No, sir; Oliver and Robinson had ceased to do business under that name; it didn't require any blind.

Q. State whether, as a matter of fact, to your knowledge, that firm is a combination of the parties named in it and the mortgagees, Hunt and Eschleman, and whether you ever told Melville it was.

Objected to as leading.

A. No, sir; it is not true. There is not a shadow of truth in it.

Q. What do you know of the mortgagees, Hunt and Eschleman, being partners in that concern?

A. I know they are not partners, and never have been.

Q. State what the gross earnings were of that concern. It has been stated that they were three hundred and twenty-five thousand, and the net earnings were two hundred thousand.

A. I can state the entire product of the mill.

Objected to as not being the best evidence, the books of account kept by the concern being the best evidence.

Q. Can you give the facts of your own knowledge?

A. Yes; I can from memoranda; I have some memoranda on the subject.

3455 Testimony from memoranda is objected to unless they are the original entries kept by the concern in the regular course of their business.

Q. State where you got the figures?

A. It is a compilation of the business of the company, taken from the books and bills of lading, more especially from the bills of lading. I know it is correct; I am perfectly familiar with it.

Q. State it.

Objected to unless the originals are produced.

A. The amount of lumber shipped in the year 1869 was five million sixty-six thousand and seventy-six feet (5,066,076 feet.) In the year 1870 it was five million six hundred and thirty-one thousand three hundred and sixty-one feet (5,631,361 feet). That lumber was worth ten dollars a thousand.

Q. By Mr. RUSSELL: Do you mean what it averaged?

A. Yes, sir; I mean what that kind of lumber was worth on the dock. I give this as a fact derived from papers compiled from the books, what it averages above inspection and freight, and also as to what lumber of that kind was worth at that time in Alpena county. In the year 1871, this past year, we have manufactured something under four millions, and lumber this season has been worth from eleven to twelve dollars; that is what it sold for independent of freight.

Q. How much would that be, in the aggregate?

A. It would be about $130,000.

Q. For what period?

A. The entire period after the season of Oliver and Robin-
3456 son. The net earnings would be light, except the last year. It is difficult to manufacture lumber to sell at that price. I don't consider that there is any profit over the stumpage. During the first two years, considering the class of timber we were manufacturing, the difficulty of getting it out, and the large expense we were at, I don't think we realized any profit more than a stumpage valuation; that is, until the year '71; the present year, '71, we have done better. It is estimated to cost four dollars to put the timber into the river. It is estimated to cost a dollar to run it, but it cost more than that. It costs that; besides the timber didn't hold out in measurement, and the absolute cost is probably $3.50, what it cost to manufacture it, saw it, pile it, and ship it, but with the difficulties it costs more. There was difficulty for want of water, bad floatage, and carrying away dams. I think it cost at least $2.50 to drive it.

Q. Do you speak of '70?

A. Yes, sir; I speak of those two years together, taking one with the other.

Q. What sort of lumber was that in point of character?

A. It ran a little under the value of common; it appears so from the inspection bills and from the proceeds; there was hard pine at first, and a good deal of Norway mixed with it; it would inspect pretty near common.

Q. Was that during the time Oliver & Robinson manufactured?

A. Their time, as well as subsequent. I would like to put in some inspection bills as evidence on that point; they would show
under Oliver & Robinson's administration, as well as that of
3457 the new firm, about how the lumber ran for quality; I have the original inspection bills here.

Q. Can't you state from them?

A. Yes, sir. During Oliver & Robinson's time there was a cargo, on the 15th of June, that ran twenty-four per cent. culls, about five per cent. uppers, and the balance common—that is under an inspection bill of Martin Cline. There is a cargo by Oliver & Robinson, under date of August 5th, the same year, that runs less than common. It runs thirty-five per cent. culls, no uppers, and the balance common. September 22d, '69—that is the new firm—it runs twenty per cent. culls, and eleven per cent. uppers. April 30th, '68, a cargo runs five per cent. uppers, and about twenty-three per cent. culls. All the lumber runs less than common. Leaving out the Norway it runs considerable less. Last year we had a good deal of Norway, and it probably brought up the standard on common, but reduced it in the value of the common. The common was not worth as much as it would have been.

Q. State what the value of that lumber was, in your judgment, and at what price it was contracted by Oliver in these contracts that I have referred to?

A. The value of the lumber that I have already stated was ten

dollars a thousand; the contract that I refer to that Oliver made with the Haineses was for the delivery of half a million; the price of that lumber, the net proceeeds, would have been about a dollar less probably than the price I have given for the same lumber; his contract called for culls delivered in Buffalo seven dollars, and the common seven dollars; we at that time considered
3458 freights worth four dollars; that was what it cost us, with the possibility that it might cost us twenty-five cents more; one-half of the inspection would also come out of that fourteen dollars; the inspection would be about thirty-eight cents; also, the insurance on the lumber would possibly have been ten cents; I don't know exactly what figure to place that at; alogether it would have reduced the price of that lumber; considering the low price of the culls, it would have reduced it not less than a dollar below the price I have given.

Q. Can you state how much lumber there was on hand at the time Cunningham bought in there?

A. There could not have been but very little lumber on hand at that time; certainly not two million and a half, as some of the witnesses have estimated; I don't recollect exactly what there was; I know there couldn't have been that amount for several reasons.

Mr. RUSSELL: I object to any further answer being given, as the witness does not know the amount.

WITNESS: I don't think there was to exceed over and above what the American Champion took away, a hundred thousand feet.

Q. What was the capacity of the dock to hold lumber at that time?

A. From a half to three-quarters of a million filled the docks so full that it had to be piled outside away from where vessels could reach it. In the spring of '68, the time that we had most of the lumber on hand that we had sawed all winter, we had about three-quarters of a million; that was the largest amount we ever
3459 had at any one time. We shipped at that time that season eighteen hundred thousand, and that winter over seven hundred thousand. I am speaking of the season Cunningham bought; after Cunningham bought of Oliver.

Q. By Mr. RUSSELL: Are you testifying from minutes?

A. I am refreshing my recollection from minutes. That made two million five hundred thousand, but in order to produce that our mill ran some three months, September, October, and November, '68. If there had been two million and a half on hand at the time of that sale the product of the mill would not have exceeded four or five thousand for twelve hours, whereas the capacity was supposed to be thirty or forty thousand.

Q. Can you state whether sections 26, 27, 34, and 35 were or were not abandoned as fully lumbered, as testified to by Mr. Dyer?

A. Those sections were not fully lumbered or abandoned.

Q. Have you been over them?

A. Yes, sir; and the timber that they describe as having been wasted there—down timber—was timber that was left in that shape

on account of the unprecedented breaking up of the winter. The character of the pine there is mixed; most all of it over the whole tract is mixed pine.

Q. Will you state what was the price of stumpage there in '67, '68, and '69, the highest rates that prevailed that you know of?

A. I have not had any personal transactions in stumpage
3460 until the past season. This season I paid for white pine on a location better than the average of that two dollars. I was offered stumpage in '69 by Lockwood at a dollar for Norway and two dollars for white pine in a favorable location.

Q. What is the highest price of stumpage that you have heard of being paid up there?

A. The highest price paid I have heard of is, for the best quality of pine, three dollars.

Q. For Norway, what would it be?

A. The highest uniform price is a dollar for Norway, and two dollars for white pine, where it is mixed.

Q. Was Hawkins ever associated with you in running that property, immediately after this sale to Cunningham by Oliver?

A. He never was associated. My letter to him, "Exhibit A," shows the manner in which I treated him at that time.

Q. Was he ever, at any time while you were connected with the management of that business, associated in the management of it in company with you?

A. Not in company. He was a while acting as foreman.

Q. What was his relations at that time with Oliver & Robinson?

A. A part of the time he was one of their foremen; worked for them.

Q. Did he ever represent any partnership interest in the management and conduct of that business while you were connected with it?

A. Immediately after Cunningham went away he assumed,
3461 or appeared to assume, some control through Cunningham, but I immediately stopped it by that letter.

Q. He didn't continue then?

A. No, sir; but he met me in Detroit, as appears by another letter, marked "Exhibit H." My memory from that is about the 22d of Sept. I met him in Detroit that day. That is the last time, I think, that he was ever at Devil river.

Q. Oliver has testified that, after going over that property there the first time, you agreed to meet him in Detroit?

A. No, sir; I told Oliver at that time that I shouldn't purchase. I took the Detroit boat, and he arrived in Detroit about the time I did.

Q. If you agreed not to purchase, how came it that you did purchase?

A. He offered further inducements and representation, which led me into further consideration of it, and finally I purchased.

Q. In the agreement that was made between you and him in regard to the copartnership, can you state whether or not he had knowledge

of that clause in it which invested you with the principal management and gave you charge of the business?

A. He dictated that to *you* himself. He expressed at the same time a desire to be relieved of the business—his intention of being relieved, to give his attention more to land-looking. It was also read over to him, and he heard it read before it was signed.

Q. Did you act in accordance with the provisions of these articles?

3462 A. Yes, sir; I undertook to do so.

Q. Did he ever make any complaint to you? If so, when, as to your assuming so to do under that?

A. He never made any complaint about my assuming to do so.

Q. What, if any, agreement was made between you and him as to his outstanding accounts when that copartnership was entered into?

A. No further agreement than was set forth in the articles of copartnership between him and myself.

Q. Why was that agreement dated back?

A. He had originally made up an inventory. It was supposed to be an inventory on the fifteenth of October, but a part of the lumber had been shipped subsequent to that time, and the agreement was dated back to give me the benefit of that lumber which had been sawed out of the estimate of logs.

Q. Was there any other reason, or was that the sole reason?

A. That was the chief reason. At any rate, I don't recollect whether there was any other or not.

Q. We have heard something about a credit being entered on the books there of six or seven thousand dollars, and I believe it was said that was in your handwriting or directed by you. Will you explain what that was?

A. The books from which he takes that balance were erroneous and incomplete. For instance——

Mr. RUSSELL: I object to any evidence in regard to the books without they are produced.

WITNESS: I want to speak of what is not on the books, but

3463 should have been on. In the first place, there were shipments of lumber made after the 15th of October—620,422 feet. Lumber, I believe, was worth more that year than the year following. I think that lumber could not have been worth less than $8,000.

Q. What had that to do with this credit?

A. It would have reduced the credit that much if it had been put on the books by standing as an offset to it. The proceeds were collected by him, and should have been charged to him. The lumber belonged to Oliver & Robinson. There was two thousand dollars that the company borrowed of H. M. Robinson, which went into Oliver's hands, and was not charged to him, as it should have been. Oliver made a contract in the name of Oliver & Robinson, on which he got five thousand dollars, and that was not charged to him on the company's books. The six thousand dollars that I paid

to the Haineses to release that chattel mortgage was not charged to him, and it should have been. It was a mortgage that Oliver gave; and there was an item of ten thousand dollars that was erroneously credited to him by mistake of Gallup, who afterwards corrected it on the book, but subsequent to the time when that six thousand dollars was shown.

Q. How was it this account was left in this condition?

Objected to—irrelevant.

A. It was left in this condition because we failed to get them on the books. I told Mr. Gallup to put them on the books, but he didn't do so. He was under control of Oliver more than he
3464 was under control of me. (Objected to.) I ordered him to do so, and he didn't do it. I know he was under the influence of Oliver; that is all I know. Now, in relation to that six thousand dollars, that mortgage that I paid for Oliver, Oliver has testified that I paid that against his wishes. That is not correct. I paid that by his wishes and very much against my own. I paid it because counsel told me I could not avoid paying it. I have a letter here from Oliver, in which he approves of my conduct. The letter is dated April 22d, 1868, addressed to George J. Robinson, and signed by David D. Oliver. He says: "In view of the matter I think you acted wisely in making them that proposition and hope you have concluded a trade with him."

Q. What does that refer to?

Objected to on the ground that the letter speaks for itself.

A. That was in reference to the statement I made of that claim. (The letter is offered in evidence, marked "Exhibit A 3.") I would say also, in relation to that, that in our conversation he approved of it afterwards.

Q. Were any chattel mortgages given by you on that property for the benefit of the firm; if so, state what they were, and whether they were executed with Oliver's knowledge and assent?

A. I executed two chattel mortgages for the purpose of using them. (I have not refreshed my memory in regard to the
3465 dates of them). One was executed to Isadore Kauffman and one to Andrew Bates. They were executed with a view to using them for the benefit of the company, but subsequent events changed my mind, and I didn't use them at all. One I designed to use to prevent a party from suing us. The other I designed to use to raise some money we were in need of. There was no loss or embarrassment or anything to the detriment of the company by reason of their execution. I don't think that Oliver was there at the time I made them, or at the time I was about to use them. I don't know that he knew anything about them.

Q. Have you fully stated the reasons why you executed them?

A. I think I have.

Q. Do you remember as to a cash payment that was made on the Miller contract?

A. I do.

Q. Was that ever credited on the books?

A. Yes, sir; the payment was made to H. M. Robinson.

Q. Did the company receive the benefit of it?

A. Yes, sir; I don't recollect the dates; but in due course of business it went on the books in the usual way. I collected the balance of that—that is to say, I think I made drafts for it. I think I got part of it, at any rate.

Q. How was it with reference to lumber sales made by you through the term of Oliver & Robinson's copartnership, and the accounting for the proceeds thereof, whether they were all accounted for duly or not.

3466 A. They were all accounted for in the office as promptly as possible, together with the collections and disbursements.

Q. When did your friendly relations with Oliver cease?

A. I think it was in February, '68. Oliver came to Ossineke, having been East, and brought with him what I deemed unfavorable contracts. I had also learned in his absence of the existence of a chattel mortgage upon our logs. These two things were the principal causes of our early difference. I had considerable talk with Oliver about that chattel mortgage at that time—the chattel mortgage which he made to the Haineses, and which I afterwards settled. There was a very large amount of outstanding indebtedness that he had not represented to me—had not reported to me.

Q. What did he represent as his indebtedness at the time you went into partnership, do you remember?

Objected to as incompetent and irrelevant.

A. I have here an original memorandum made by Oliver.

Q. Does that original memorandum represent the amount he said was his liabilities outstanding, and all his liabilities?

A. It does.

Q. In what amount?

A. In the amount of thirty-nine thousand dollars. It was a statement of his condition and a proposition of what he would do on which we commenced negotiations for the purchase.

3467 Q. Was it or not a basis of your final adjustment?

A. It was, except so far as it has been changed by the partnership articles.

Q. That is in Mr. Oliver's own handwriting, is it?

A. It is. I received it from him. (The paper here referred to is offered in evidence, marked "Exhibit A 4.") I afterward found his liabilities to be very different from [what] this exhibit shows. I have not recently refreshed my memory on several points, but I may be able to think of a little. I will take this claim of the Haineses; that is represented as twelve thousand; whereas, after shipping them some six thousand feet of lumber subsequent to that date, he settled their accounts and owed them some twenty-six thousand dollars or thereabouts, which really increased that amount twenty thousand. This account of Hill's—two thousand—I found, I think, to be three thousand. The amount of Preston's, I think, was increased about a thousand dollars. That is my recollection of it. And there were

sundry other persons. I knew more about it at one time than I do now. It has slipped my mind, and I don't care to go into it.

Q. Can you form some idea whether it was larger by thousands or five thousands?

A. I think it was many times five thousand.

Q. Can you state what were his actual liabilities as they disclosed themselves to you?

A. If I had the answer that I put in and could refresh my memory from that, I could do something about it; but without it
3468 I don't think I am safe to say anything about it. I never undertook to exclude Mr. Oliver from the firm; I have a letter from him dated June 18th, '68, which shows, I think, a reasonable degree of partnership trust. The letter is offered in evidence, marked "Exhibit A 5." I don't think I have anything later than that. There was a good deal of talk one way or another about buying Oliver out, but I never made any definite offer; I was not in shape to do so. I was present at Buffalo at the time of the agreement there whereby Cunningham sold to Haineses and myself; I was a party in that. Oliver was there pretty much all the while. He was out sometimes trying to sell to other parties, and divided his time up; part of the time he was there, and part of the time was not; he was there when it was closed. That was at Williams' office in Buffalo.

Q. Do you know of your own knowledge whether he had that paper in his possession after it was drawn up, and whether he read the same?

A. I do.

Q. Will you state what you know about it?

A. Williams made the original draft, and afterwards he took a part of it, and Barton, his clerk, took a part of it, and each copied it from the original draft. The two were then put together and made one agreement. That was lying on Barton's desk, and I came in. I think it was a little after dinner. Williams hadn't got back from dinner, at any rate, and Barton was not yet back. The draft at that time, I think, was entirely completed—possibly it might not have been, but nearly, if not quite so, and Oliver came in
3469 before I did. When I came into the office Mr. Ranney sat, with his feet in the window, smoking a cigar. Oliver was beside him. When I came in Oliver looked on the desk and saw this agreement lying there. He picked it up and read it. I was desirous of reading it myself, and was waiting, and it seemed a long while to me; probably a good deal longer than it really took. He discussed some parts of it. He talked about that part which related to taking the property subject to the debts. He seemed to prefer that it should have been written in such a way as to oblige us to pay the debts. I told him that I, for one, was taking hold of that property with a view of bettering myself, and I never would agree to pay the debts, because it was an experiment, and I didn't see my way clear through it. It was even doubtful at that time whether after we got the property we could run it.

Q. What was the difference between you in that discussion—what were you willing to do?

A. I was willing to take it as the paper read, subject to the debts. He rather expressed a desire, but did not press it, that it should read the other way. It seemed to me he was an hour or two in reading that paper, but likely I would be safe in saying it was half an hour. He appeared to read it all through. He found no other objection than that I spoke of, and he didn't press that. He afterward approved it by his agreement and by his deeds.

Q. Did you ever hear of his making any objections when it came to the execution, or afterwards to that feature in the agreement?

3470 A. No, sir; he didn't raise any objections to it; he merely stated at the time that he would like it the other way.

Q. Do you remember whether he was present at the time it was closed or not?

A. I don't recollect whether he was present at that time or not—the time the paper was signed; I don't know whether we were all together at that time or not, or whether we signed it in detail; it was signed in Williams' office, but I don't recollect whether each one went in and signed by himself or whether it was in conference.

Q. Did you ever hear from him, confidentially, any objection made to the terms of that contract?

A. I never heard any objection to the terms of it; I have a letter from him dated December, 1868, which is after the time he fixes as having gone to Williams' office and reviewed the contract.

Q. Has that any reference to this contract?

A. It is a friendly letter; don't refer to it, but it seems to me if he had been dissatisfied he would have referred to it; it shows the state of his mind at that time; after the agreement was signed and the papers made out, I said to Oliver, "I have gone into this thing, but I don't like it; it is like being forced into a partnership with a gentleman that I don't know anything about, and if I can induce anybody to buy my interest out at what is fair I will make you a present to do so." And this letter refers somewhat to that. (The letter is offered in evidence, marked "Exhibit A 6." This agreement was entirely independent of what was called the Lockport agree-

3471 ment; that was little more than an agreement to extend his time, and in consideration of it he giving them the refusal; their extension expired, and they did not see fit to avail themselves of the refusal.

Q. What privilege was conceded to Oliver in reference to this property after this Buffalo agreement was consummated?

A. We extended the time to him from time to time to find better purchasers after the agreement had been made; we extended it so long that it began to frighten me about the close of navigation setting in.

Q. When, if ever, did Oliver protest to you against the closing of that agreement, or when did he ever complain as to any provision in that agreement?

A. Never until his bill in chancery; I don't recollect any other instance that led me to believe he was not satisfied.

Q. Did you ever personally hear from him on the subject?

A. I don't think he ever said anything to me about it, except immediately afterwards; immediately afterwards he was satisfied, and we walked around Buffalo, and took a glass of beer together.

Q. What did he say then?

A. He was glad it was fixed up, he had worried so much about it; the buffalo agreement was never altered from the original as approved by him; I will say that we negotiated and dickered and bickered a long while before we came to that agreement, but after it was made there were no questions raised about it, except the one that I spoke of.

3472 Q. Will you state whether in any copartnership you have had with Oliver or with Haines and Cunningham Messrs. Hunt & Eschleman have ever been partners.

A. They have never been partners.

Q. In any firm that you have been connected with?

A. No, sir.

Q. Do you know of them having any arrangement or scheme by which they were to become partners, and you to become a partner with them?

A. I know nothing of any arrangement or scheme of the kind.

Objected to, unless the articles of copartnership be produced, which would be the best evidence.

Q. There are no articles of copartnership, are there?

A. No, sir.

Q. You know of no such scheme?

A. No, sir.

Q. Will you state the circumstances of Melville's discharge from the concern.

A. I had been reprimanding Melville for some time previous to February 24, '70; his conduct did not suit me, and he became uneasy under it, and under that date he wrote me this note.

Objected to, because it was not exhibited to Melville at the time of giving his evidence, and he was not asked whether he wrote it.

Q. Will you state the circumstances under which he left?

3473 A. He was informed that he would not be wanted as a foreman; if he stopped at all he would have to stop as a workman, on the same terms as the laboring men, and thereupon he left.

Q. Give your opinion as to Mr. Leach's capacity for the work that he represented himself as competent to do?

A. He had no capacity for scaling logs or lumber; he was an illiterate man who couldn't read or write, as he has informed me himself. I found him once undertaking to measure a cargo of lumber, and I stopped him immediately, sent him to shoving lumber on the boat instead of measuring it; allowed it to go witout measurement at all, because I was satisfied that his measurement was worth nothing,

from the manner he was doing it. I had that opinion of him, and I communicated it to the firm May 9, '68.

Q. Did you ever let out a drift of two thousand feet of logs in the summer of '68?

A. I never heard of such a thing until the commencement of this suit. I deny any knowledge or information of it.

Cross-examination:

When I went into the firm of Oliver & Robinson my age was about 30 years. Since my majority my principal occupation had been that of book-keeper.

Q. Had you had any experience then in the looking of lands, in the manufacture of lumber, or in any business whatever connected with lumbering?

A. None, except that I was familiar with the machinery to some extent.

Q. What kind of machinery?

A. Most all kinds of machinery. I had been brought
3474 up, reared amongst machinery—iron working, wood working. I am somewhat of a draftsman; can make drawings of machinery, and am a little of an engineer.

Q. Had you had any experience in any of the departments of business connected with carrying on lumber operations, as, for instance, the purchasing of supplies?

A. I had not.

Q. Were you familiar with the measurement or inspection of lumber?

A. I was not? I was capable of measuring lumber, but not of inspecting it.

Q. As you, according to your own statement, were entirely inexperienced in business, or had no knowledge of it, how did it happen that it was inserted in the articles of copartnership that you were to assume and have the principal control of this Devil river business?

A. The lumbering was represented as having been jobbed by the thousand, scalers agreed upon; the mill was under charge of a foreman represented to be an expert, and under such a state of affairs it did not seem unreasonable that I should assume that control; I expected, of course, to be advised and to learn.

Q. Who introduced you to Oliver?

A. My father.

Q. For what purpose?

A. For the purpose of forming that partnership.

Q. Did you immediately go to Ossineke to look at the property?

A. I went there, I think, about the 15th of October.

Q. Did you look at the land?

A. Very little.

3475 Q. At the lumber?

A. Very little.

Q. At the store?

A. Yes; I was at the store.

Q. At the books.

A. I don't think I looked at the books; I don't recollect seeing them.

Q. Inasmuch as you were a book-keeper and familiar with books, why didn't you look at the books?

A. I had no rights there; I had but very little time; I was more desirous of seeing the property than I was of the accounts, because Oliver represented to me the state of the accounts, and in order to prove or disprove that would be a great deal of labor to a party not familiar with the books.

Q. You went there for the purpose of forming a personal judgment in regard to the business, perchance make a partnership with Oliver?

A. I did.

Q. That was your sole object in going there?

A. Yes; I presume that was my sole object in going there.

Q. Who made the bargain with Oliver for your quarter interest?

A. I made the bargain; Mr. Oliver had had considerable talk with H. M. Robinson in regard to it, but I made the bargain myself.

Q. Did not your father, in substance, arrange the details of that bargain?

A. I don't know what he did with Mr. Oliver when I wasn't present.

3476 Q. Who directed the drawing up of the writings?

A. Mr. Oliver and myself together.

Q. Did you and he together ever come to Mr. Duffield's office?

A. Yes, sir.

Q. Who paid for them?

A. It was charged against the firm of Oliver & Robinson; I never paid the debt; I don't know whether Mr. Oliver has or not; it was understood that it should be charged against the firm of Oliver & Robinson.

Q. Did you ever give your father any obligation to repay the capital to him which he furnished you to put into your concern?

A. It was understood that I should repay him.

Q. Did you give him any writing of any kind whatsoever—any obligation to repay him?

A. Nothing only my oral assurance that he should be repaid at that time.

Q. Practically didn't he put the capital in and send you to look after it?

A. I did not so understand it.

Q. Hasn't he been personally upon the ground overseeing that business from that day to this?

A. He has been upon the ground a great deal; he has seen to such things as I wish him to look after, but nothing beyond that.

Q. From that day to this he has been engaged in no other business besides supervising your lumber concern at Ossineke?

A. He has not been engaged in any other business that I know of particularly.

3477 Has he not spent over three-quarters of his time or nine-tenths of his time at Ossineke superintending your interest there in the Devil river Oliver property?

A. He spent over three quarters of his time there, but not superintending my business. He is a pretty old man, and he makes himself useful; he is not an idle man; he spent the biggest part of his time this season hoeing cabbages, or doing something about the house.

Q. Have you ever paid anything of the capital which he has advanced to you?

A. I have never been in condition to do so.

Q. Has he ever asked you for any part of it?

A. He has frequently talked about receiving his pay as soon as I was able to give it to him.

Q. Have you paid him any compensation for his labor for the concern?

A. I don't think he has ever drawn anything out as pay.

Q. Has there ever been any agreement or stipulation in regard to his compensation in writing?

A. No, sir; not in writing that I know of, unless Mr. Oliver made one; I don't recollect but what there was some agreement made when Mr. Oliver had some talk with him.

Q. When you gave the capacity of the mill at 40,000 feet per day, you mean it sawed about that with two circular saws, and before the gangs were put in?

A. I don't understand that I have given that as the capacity of the mill; however, what I meant about it was at the time it had the two circular saws.

3478 Q. When the books of Oliver & Robinson were begun did you use the inventory of eight thousand as the basis for commencing the new books, and did you transfer Oliver's accounts from the old to the company's books?

A. I think the inventory was entered on the new books. That is my impression. I have not refreshed my memory on it.

Q. What about the transfer of the accounts?

A. The transfer of the accounts was made.

Q. Did you personally select out the accounts which Gallup should put upon the new company's books?

A. I was personally aware of their going on to the books. I don't know that I selected them out.

Q. In a certain answer put in by you in a case on the chancery side of the Alpena circuit court, in the case of David D. Oliver against George J. and Henry M. Robinson, did you state that you selected the accounts and directed Mr. Gallup to enter them upon the books?

A. I don't recollect whether I did or not. I stated the facts as they were.

Objected to as irrelevant.

Q. Did you state that as one of the facts?

A. I don't remember.

Q. Do you know the dimensions of the dock which you refer to?

A. I have not refreshed my memory lately on the measurement of the dock.

Q. Are you acquainted with surveying or estimating lumber—an amount standing on a particular piece of land?

3479 A. I am not expert about it. Still I would rather have my own judgment of it, if I were to pay for it, than that of anybody else.

Q. Have you been, up to this day, over all the Devil river property?

A. I have been all over where there is any timber on it, I think; have been over it a great deal.

Q. You state that you think you didn't know anything about the Cunningham trust until the fifth day of September, being Saturday. Will you state whether, in the answer which I have referred to, you stated that you had your first talk with Henry S. Cunningham upon that subject on or about the fourth day of September, 1868?

A. I don't recollect what I said about it.

Q. When Cunningham and Oliver called upon you with reference to Cunningham's buying Oliver's interest, did Cunningham ask you whether it would be agreeable for you to have Hawkins personally tend to the management of his interest, if he should purchase?

A. I think I recollect something about it now that you speak about it. I think there was something said about Hawkins managing his interest.

Q. Did you state in your answer which I have referred to as follows, upon that subject: "Cunningham and Oliver together called upon the said George at the office of the said company at Ossineke, and stated that they desired a private interview, and stated to said George that they were having some talk about the purchase and sale of Oliver's interest in said property, and wanted to know if the change would be acceptable to the said George. To which said George replied that, without disrespect to Oliver's presence,

3480 said George would be plain in saying that said Oliver and himself were at too great variance to do business together, and that said George would be glad of any change which should be made; that said Cunningham then asked said George if he thought he could get along with Geo. W. Hawkins to take charge of the business and in looking after the logs, and said George replied that he was willing to try." Did you state that in your answer?

A. I think those are, verbatim, my words of that answer.

Q. You have stated in your direct examination that the knowledge which you had regarding Oliver's sale to Cunningham was derived from an examination of the records. Did you state in your answer which I have referred to: "Said Hawkins appeared at Ossineke and told said George J. Robinson that said Cunningham had purchased Oliver's entire interest in said property?"

A. I think I may have said so in my answer; I don't know.

Q. Did you also use the following language immediately after in your said answer: "Said George J. Robinson waited some days ex-

pecting to hear from said Cunningham, but failed to do so, and made the following entries in the day-book of the company, to wit: Sept. 5th, 1868, page 146, 'In consequence of David Oliver's recorded sale,' etc."

A. It is possible, although my impression is, I used the words, "under date of Sept. 5th."

Q. Did you say in that answer further, that Sept. 11, 1868, on page 147, you entered "Know all whom it may concern," etc.?

3481 A. I think I did.

Q. Did you state in that answer referred to subsequently as follows: "Said Hawkins afterwards undertook to take charge of some parts of the outside business of the concern?"

A. I think, perhaps, I did.

Q. Did you further state: "Said Hawkins went to Buffalo for instructions from Cunningham, and carried from said George J. to Cunningham that said George J. was willing to do as he had agreed, but that said Cunningham must put himself into the traces and assume the relations of partner, takes its risks and duties, before he could act with him?"

A. I think it is altogether probable that I did; I don't recollect of that letter now, but I think it would be in accordance with events that I would do it.

Q. I understand you to say you did tell Cunningham it would be agreeable to you that he should buy out Oliver?

A. I did, of course expecting him to take partnership position in the firm.

Q. You subsequently become a partner with Cunningham?

A. I did.

Q. And are still, at this time?

A. Yes, sir.

Q. How soon did you become a partner of Cunningham?

A. I have not refreshed my memory on that date, but I think it was the 3d of January, 1869.

3482 Q. Did you continue to run the business between the conversation in the early part of September and January?

A. Not alone. I did for a time until the sale of Mr. Oliver and Cunningham to Haines and Ranney.

Q. Who did run the business between the early part of September and January following?

A. I have just accounted for a part of the time. I say I did from that time until the sale in Buffalo; after that time Robinson, Haines & Company, who were composed of myself, Calvin Haines and Philip M. Ranney, did.

Q. When did they commence to run the business?

A. As soon as this sale was confirmed.

Q. Will you exhibit the articles of copartnership between Robinson, Haines & Ranney, and between Cunningham, Robinson, Haines & Company, or true copies?

A. I have not got either one or the other.

Q. Will you exhibit the books of account and the original entries

exhibiting the amounts of lumber shipped by the firm of Cunningham, Robinson, Haines & Company in 1869, '70, and '71?

A. I can exhibit the bills of lading and the books, if my counsel advises me to do so.

Q. By Mr. DUFFIELD: Have you got them here?

A. No, I have not; neither have I got the bills of lading here.

Q. By Mr. RUSSELL: Will you state, under the articles of copartnership between Cunningham, Robinson, Haines & Company, what capital was put in by Cunningham, and what debts he assumed to pay a portion of?

A. The arrangements made by us at that time, as near as I can recollect them, were, that we should go in all together in the property and share its responsibility; that we would each furnish what money we could and what credit we could, and whatever
3483 one did more than the other would bear interest and be credited to him, for which the firm should be responsible.

Q. Will you furnish a copy of the balance sheet of that firm for each year since it has been running?

A. I don't think it would be possible for me to do so. I don't know that we ever had more than one, and I don't know that I can furnish that.

Q. You don't do your business, then, in a business-like way, do you?

A. We do it about as well as the majority of people.

Q. You say you don't have balance-sheets?

A. I don't think we have but one.

Q. Do you think it is business-like to do business several years without having a balance-sheet annually or semi-annually?

A. Not in that particular respect I don't think it is business-like.

Q. Can you give any reason why you have not followed the general custom of business men in making balance-sheets?

A. In the first place, I was rather unfortunate in getting bookkeepers that understood their business, and with a pressure of other business upon us we were content to look over the books, and I can tell all from the books without a balance sheet. I know the state of it.

Q. Will you tell what the stipulation or obligation in the contract between Cunningham, Robinson, Haines & Co. was in regard to the payment of his interest and principal by installments and conversion of all liabilities which were upon the property at the time the Cunningham trust was formed, as between the partners?

3484 A. I don't recollect an agreement upon the subject.

Q. Has the firm of Cunningham, Robinson, Haines & Co. ever paid any sum, principal or interest upon any liabilities which were upon the property when they came into possession of it; and, if so, what?

A. They have paid a great many of the obligations of Oliver & Robinson.

Q. Any liabilities which were liens or incumbrances upon the property at Devil river, I mean?

A. I don't know that I can state any.

Q. Did the firm of Robinson, Haines & Co., and subsequently the firm of Cunningham, Robinson, Haines & Co., enter into possession and use of all the real and personal property of every kind and description which formerly had been in possession and use of the firm of Oliver & Robinson?

A. With the exception of large amounts of personal property that was applied to the indebtedness of Oliver & Robinson.

Q. How many inspection bills have probably been made out from the time Cunningham bought out up to now—inspection bills of lumber?

A. In the year '69, I think there were 22.

Q. How many the next year?

A. I think 25—possibly 26.

Q. State whether the firm of Cunningham, Robinson, Haines & Co., from the time of its formation, has kept a lumber yard in Buffalo, and have shipped lumber from Ossineke to themselves as consignees, and have retailed lumber at their yard?

A. Yes, sir.

Q. State whether lumber has been shipped without inspection from Ossineke to Buffalo?

3485 A. I can state from the time I have been there, up to the present time, but few cargoes we have shipped have been inspected; I think that no cargo has ever been sold from there with an inspection bill, except two cargoes from Oliver & Robinson and one or two cargoes by the new firm; we didn't inspect it there, because it is inspected in Buffalo, and to save that additional expense.

Q. Have you ever had charge of the books at Buffalo exhibiting sales there and the prices per thousand?

A. I have examined them some; I have been there not so much or the examination of the sales as for the examination of the cargoes that they shipped there.

Q. Have you any personal knowledge of the gross receipts in the yard at Buffalo through the year?

A. No, sir; I have no information as to the receipts at Buffalo.

Q. How do you undertake to say, then, that this lumber which you speak of in the years 1869 and 1870 was worth $10 a thousand?

A. That is what it was worth at the mill.

Q. How can you testify what it was worth at the mill if you did not sell it at the mill, but shipped it yourselves and sold it retail at Buffalo?

A. Because I was familiar with the prices of lumber there and at Saginaw.

Q. You don't pretend to give it from actual sales, then?

A. I based it at Devil river, because there was the place of the receipts of the mill and property.

Q. In 1869 how many men did you employ in the season of running down logs?

3486 A. I have not any figures by which I could refresh my memory on that subject.

Q. What wages did you give?

A. I don't recollect. We hired men on as favorable terms as we could. Did not pay any more than our neighbors.

Q. How long did you have water to run the logs with in the spring of 1869?

A. We didn't have a great deal of water.

Q. How far did you have to run the logs?

A. I should think by the runs and crooks of the river about six or eight miles; a large portion of the way they had to be "poled."

Q. Was not a large part of the logs that season got out within two miles of the mill?

A. During the years 1868 and 1869 a large portion of our logs had to be floated almost the entire distance of the stream. That, I judge, is about eight miles from the crooks and turns, and a good portion of the way they had to be poled through.

Q. State whether if in the year 1869 you got out five millions of logs, and it cost you according to your statement two dollars a thousand to run them, that would make ten thousand dollars; whether that would take twenty men six months at $3.84 a day, and whether you did as a matter of fact have any such number of men for such a time at such a price per day.

A. We employed men all summer on those logs. In the spring we had a good many men. After that we tapered down.
3487 In the spring of the year wages were very high. We had a large amount of men, and spent a good deal of time in keeping our dams in shape to float the logs. We shut down, I think, on the average, once a week. In addition to the regular help on the river I had the entire mill crew to run.

Q. Can you tell the exact amount of money realized per thousand feet over and above the cost of manufacturing, including cutting, hauling, and sawing?

A. I don't think we netted anything the first two years above stumpage. I have been over it often enough to be familiar with it, but I can hardly express figures that don't exist.

Q. Are you willing to exhibit the amount of sales at Buffalo during the two years?

A. I will say that we have handled in Buffalo more lumber perhaps than we have manufactured.

Q. Do you mix and mingle in your accounts lumber derived from other quarters?

A. The office in Buffalo gives the mill credit just as though it was an independant concern at market prices for the lumber; treat them as parties they had no interest in. The business is conducted entirely separate. When lumber comes to Buffalo from the mill it is creditedto the mill, and when it comes from other parties it is credited to the parties from whom it comes.

Q. What difficulty would there be, then, in giving sales from the mill?

A. A man may come in who may buy three or four different lots of lumber, a part from our mill, part from a mill at Bay City, and from another mill, and these are all put in together. It is
3488 conducted independently. We sell at market prices and the business is a separate business.

Q. You credit the mill what you please without reference to actual sales?

A. We credit them at the market value of the lumber; so many feet at so much a thousand.

Q. When you make actual sales you don't discriminate between lumber from other sources and that from your mill?

A. That enters into the business of the Buffalo yard.

Q. How are you able to show what the profits of your business at Ossineke are?

A. I show it because the entire accounts are there. We have sold the firm at Buffalo the lumber, got our credit for it; it is on the books and it shows at any time how we stand.

Q. Don't the firm of Cunningham, Robinson, Haines & Co. have the benefit of retail prices at Buffalo?

A. They do in separate business; they have, as you may say, two partnerships—one for the manufacture of lumber, and one for the sale of lumber.

Q. State what you have realized for three years past, or since the firm was formed, by the retailing, selling out this Ossineke lumber at Buffalo, as exhibited by the books kept there?

A. I have not any figures that I can give at this time.

Q. Does that concern, or that department of your concern, keep balance-sheets?

A. I think they have always kept balance-sheets.

Q. Are you willing to procure and exhibit those balance-sheets?

3489 A. I don't know whether any have been kept or not; I am not unwilling to show them. Oliver was with me when I looked over the property at Ossineke preparatory to purchasing.

Q. Did he aid you in the examination there?

A. We went together.

Q. After the partnership was started who, as a matter of fact, was the managing partner?

A. Before we went up there, what business was done down here in the way of purchasing supplies, Oliver did; and after we got up there, I don't know that either one of us particularly took the lead for a short time after that. After we got there and became a little familliar with things, I rather took the lead, I think.

Q. Were you examined as a witness in the case of Oliver against H. M. & Geo. J. Robinson, in the Alpena circuit, the same case which I have referred to?

A. It has never come to issue that I know of.

Q. Were you examined in the Saginaw court in the case of Reynolds & Choate against David D. Oliver & Geo. J. Robinson?

A. I think so.

Q. On the eleventh of April, '68?

A. I think that was about the time.

Q. Did you testify in that case, at that time, as follows: "Oliver took the lead in the business; he was an old operator, and I was green when I went there; I had confidence in Oliver"?

A. Yes, sir; I think I did, perhaps.

Q. Did you consult any friends or take any advice from
3490 any person experienced in the business other than your father, at the time of entering into this partnership with Oliver—did you consult them in relation to going into the business up there?

A. I don't recollect of doing so.

Q. Had you known George W. Hawkins before you made the partnership with Oliver?

A. I had seen him, I think, previous to closing the contract, but not to know he was. I think he stopped Oliver and myself on the street, and said something to Oliver, so that I got the man's countenance. I don't think I had ever seen Henry S. Cunningham until along in the winter after I went into partnership with Oliver. He brought some money that Oliver sent up by him. I think that was the first time I ever saw him. It was some money that Oliver had received on that Haines contract. Eight hundred dollars, I think, was the amount of it.

Q. Did you have any communications with persons holding incumbrances upon the real and personal property at Devil river at the time you went into partnership with Oliver?

A. I think Oliver and I went around to see Wayne just before we closed our articles. I don't recall anybody else just now. I didn't see Hunt or Echleman—didn't know the gentlemen. I do not now recollect ever seeing them before the Buffalo agreement there with Cunningham.

Q. Hadn't you visited Hunt at his house before the Buffalo agreement?

A. I think Haines and myself were out there, now that you
3491 speak of it, about the time of that contract that Oliver and Haines made—the one that is in my handwriting. I saw Ranney and some one of the Haineses, I don't recollect which now, all along through the spring and summer of '68.

Q. Up at Ossineke?

A. I saw them there during that summer. I can't recollect exactly what time it was they were there, though I think it was Ranney and not his partner, but the other Haineses. I don't think Calvin Haines and P. M. Ranney were there at any one time together. I don't recollect that they were, but the Haines interest at Lockport and the Haines interest at Buffalo had a representative there together on several occasions.

Q. When the firm of Robinson, Haines & Co. was formed did they take possession of the real and personal property at Ossineke?

A. Yes, sir.

Q. What did they pay for it, and to whom, at any time?

A. I think the agreement will show. I am not prepared to say as to details what they did pay. I am not prepared to show anything beyond what the agreement shows.

Q. When the firm of Cunningham, Robinson, Haines & Co. was formed, did that firm take possession of the real and personal property at Ossineke at the time of its formation?

A. It was the old firm in possession admitting Cunningham into

possession with them as a new partner. I don't know what capital Cunningham brought into the business in the way of capital. We went on and gave our company obligations in carrying on
3492 the business, and they were provided for. I don't know how. For instance, we bought goods; our supplies were bought in the name of the firm that was doing business there, and were provided for by my partners.

Q. Did or did not Cunningham, in the early part of January, '69, when his name appeared in your firm, bring into the firm, or make any investment in the firm at that time?

A. I am not prepared to say that he did or did not.

Q. Don't you know that he did not?

A. No, sir; I don't know it.

Q. What consideration, if any, did either of the firm of Robinson, Haines & Co., or the firm of Cunningham, Robinson, Haines & Co., ever pay to anybody for the Devil river property, or any portion of it?

A. They carried out the obligation that they entered into when they took it, so far as I know.

Q. Have either of those firms ever paid any interest upon the Cunningham, Hunt & Eschleman mortgage?

A. Not that I know of.

Q. Have either of those firms ever paid the taxes upon the real or personal property that have accrued?

A. They have always paid the taxes upon the property, unless it has been by some omission that some part of it may have been overlooked; some oversight.

Q. Have Cunningham, Hunt, and Eschleman ever applied to or dunned either of the firms mentioned by you of which you have been a member for the interest or principal of their mortgage?

3493 A. I can only answer no, so far as that question pertains to myself. I cannot answer for the rest of the parties?

Q. They filed this bill, then, without a formal application to the two firms of which you [are] a member for the payment of the interest or principal?

A. So far as pertains to myself only I can answer.

Q. At whose solicitation did you go down to Buffalo to be present at the negotiations which took place there prior to the so-called Buffalo agreement?

A. Do you mean the time the Buffalo agreement was made?

Q. The time you went down and went to Hunt's house and afterwards to William's office?

A. I don't think that at the time I was in Buffalo at the Buffalo agreement I was at Hunt's house.

Q. You went to Buffalo and were present at the making of the agreement?

A. Yes, sir.

Q. Who asked you to go?

A. *Yes, sir.* I think that Haines or Ranney—the thing had been talked of so much, I can't say now what induced me to go.

Oliver and myself had some talk about going down there, and Ranney and myself, and Haines and myself.

Q. You had previously been to the State of New York in connection with the so-called Lockport contract or agreement, hadn't you?

A. Yes, sir. I was down there at that time.

Q. How happened you to go down for that purpose?

A. I think I went down in the hope that Haines would buy out Oliver; and also, I think, at that time these obligations of Oliver & Robinson to Haines were pressing.

3494 Q. Did somebody telegraph you to go down?

A. I think it is possible. I don't recollect.

Q. How soon after you went in with Oliver and purchased a quarter interest did you become filled with the wish to have somebody else in his place and get rid of him?

A. I became desirous of getting out of the concern about the middle of January, and continued so until I became pretty well satisfied that I couldn't get out, and then I was desirous of some change. That was about midsummer I began to believe that I couldn't get out. Oliver had assured me from time to time before that that I could get out, and he would get me out.

Q. Has the firm of Cunningham, Robinson, Haines & Co. ever paid any portion of the principal or interest of the other mortgages upon the real property at Devil river subsequent, in point of time, to the purchase-money mortgage due to Cunningham, Hunt & Echleman?

A. Not that I am aware of.

Re-direct examination:

Q. Can you tell me what amount of improvements were put upon that property after Oliver left it?

A. There was a large amount of improvements. I was careful in making figures in my answer. It has been some time since I refreshed my memory, and I don't recollect, but I think the figures were something like fifteen or twenty thousand dollars.

Q. What did they consist of?

A. Improving the river, cleaning it out for some miles;
3495 building three dams; putting in a gang, two patent edgers, and remodeling the mill generally; building new houses, improving old houses, and building docks; and also improvements in making some pasture lands.

Q. State about the water mill and its value.

A. The water mill was abandoned before I went there. I didn't think it of any value. Melville thought it was entirely worthless; others did, and I thought so myself. It never ran that I know of while I was there.

Q. Why not?

A. I presume because it was unprofitable to run it.

Q. Did you ever furnish Hawkins with a hundred dollars to go down and try to induce the mortgagees that we have been talking about to foreclose those mortgages?

A. No, sir; the hundred dollars Hawkins had was for the purpose of coming down to procure a cook (Mr. Oliver's wife was keeping the boarding-house), and some other little business of that kind, which he accounted for to the book-keeper, Mr. Gallup.

Q. Do you deny the object I inquire about?

A. Certainly I do. He went to get a woman for cook. He had a hundred dollars to go down. I think he spent about half that and accounted for the balance of it to Mr. Gallup.

Q. What was the business in point of profit in the winter of 1867 and '68 of Oliver & Robinson?

A. I think we sank that winter between twenty and thirty thousand dollars. We had about a hundred men employed all winter, and some seven or eight teams, and in the spring we had about seventy-five hundred dollars for the proceeds of it.

3496 Q. Who managed that part of the business that winter?

A. Hawkins inaugurated it against my wishes and advice, but I yielded to him on account of his having been longer in the business.

Q. Did Oliver offer you any security for the protection of your interest about that time?

A. A little before we signed the articles of agreement, or immediately afterwards, I was still nervous about the looks of matters. I became nervous because I found he had a good deal of difficulty in getting credit. He had represented he could easily obtain credit, but I found there was a good deal of difficulty, and I became nervous about it. I told Mr. Oliver so, and he volunteered to give me security on Wayne, to let me in that as joint owner on the mortgage, and also let me in as joint owner with Preston, if anything was paid. Nothing was paid Preston, however. Mr. Oliver and I went to Wayne, and he consented, and it was carried out before we went up there.

Q. Do you remember about some eight hundred dollars which belonged to Oliver & Robinson, and which Oliver claimed was not accounted for?

A. That is the eight hundred dollars which I have testified was brought up by Cunningham. It was used in buying supplies. We were nearly starving about that time, Oliver's family, as well as everybody else.

Q. Did he receive credit for it?

A. He received credit for it. He should have been charged with it also, but he was not.

Q. Was there an estimate of the lumber then on hand in October, '68, by Melville?

3497 A. Yes, sir. It was done at my instance.

Q. Is that his estimate?

(Producing a paper.)

A. Yes, sir; that is the estimate. He made four hundred and fifty thousand feet on the 31st day of October.

Q. Did Oliver see that too at that time?

A. I think not. I don't think Oliver was there at that time.

Q. Did Oliver, while he was in connection with you as partner there, make any proposition to you about stripping that land of timber, as against the mortgagees; if so, what was it?

Objected to as incompetent and irrelevant.

A. He talked to me on the subject, and he wrote to me on the subject, and the letter expresses what the talk was.

Q. Is that the letter?

(Producing a letter.)

A. Yes, sir.

The letter is offered in evidence, marked "Exhibit A 7."

Q. (Producing a paper.) Look at that paper and state whether that is Oliver's signature, and whether it was executed and delivered to Henry M. Robinson by David D. Oliver.

A. Yes, sir; that is an agreement made by Mr. Oliver, signed by him, and delivered to Henry M. Robinson.

Q. Is it still held by him; that is, does he control that paper?

A. It belongs to him.

3498 (The paper is offered in evidence, marked "Exhibit A 8.")

Q. Did you ever threaten the life of Mr. Oliver?

A. No, sir; I never threatened the life of any man; I understand that Mr. Oliver threatened mine; I certainly did not threaten his.

Q. Did he ever threaten your life to you?

A. No, sir; not to me personally.

Q. Can you state how much timber there was when the Buffalo agreement was made?

A. I can state what the estimates furnished us were.

Q. What?

A. Fifty millions, or under; not to exceed fifty millions.

Q. Furnished by whom?

A. By Johnson, I think the man's name was, of Saginaw.

Recross-examination:

Q. Do you estimate your dams as permanent improvements and also as a part of the expense of running logs?

A. I estimate the dams as permanent improvements, and keeping them in repair as part of the river expense.

Q. What right had you to go on making permanent improvements with moneys derived from this property, instead of applying those moneys to keeping down the interest and paying at maturity the incumbrances on this property?

A. I considered I had a right to do anything I saw fit that was not in violation of the Buffalo agreement.

3499 Q. Wasn't it understood at the time of making the papers between you and Oliver that the water mill should be run?

A. I don't think there was any understanding on the subject whatever.

Q. Wasn't it stated in the articles of copartnership that it should be run?

A. I don't know that it was so stipulated, and I don't know that the fact of its being abandoned was inconsistent with the understanding that it should be run.

Q. As a matter of fact, wasn't the water mill run after the formation of the copartnership?

Q. I never saw it run. It may have sawed a little lumber; I don't know whether it did or not. I think it may have sawed a thousand or two, for I think I recollect seeing that amount lay beside it.

Q. Don't you know it was regularly used after the copartnership was formed, day by day, week by week, month by month, in sawing?

A. No, sir.

Q. Don't you know it was so run until H. M. Robinson directed it to be stopped?

A. No, sir; I don't think we had any shafting or belting or anything of the kind to run with. I think Oliver requested me to get shafting or belting; I told him I didn't think it was advisable to do so; I told him the other mill would be all we could do. I went away in the spring, and it didn't run any after I got back. I was up and down all the while.

Q. Do you remember writing a letter to Oliver upon the
3500 subject of the profitableness or unprofitableness of running the mill some time during the winter or spring of '68?

A. I may have done so. I presume if I did it was in response to his requests for further shafting and belting.

Q. Are you going from here now after completing your testimony, to Ossineke, for the purpose of engaging in the manufacture of lumber?

A. I expect to do so.

Q. Is your father there at this time engaged in that matter?

A. He is there, but not engaged in that matter. He has nothing whatever to do with the men. He understands that he has nothing to do with it at all in my presence or my absence, except what I ask him to do, and I have a foreman there who I think is competent to go on in my absence without his assistance.

(Signed) GEORGE J. ROBINSON.

The depositions of Martin Hudson, Aaron W. Tyrrel, and Edward Lyon, are admitted by counsel for complainant, the same to be received as a part of the testimony of the defendants, and with the same effect as if said Hudson, Tyrrel, and Lyon, had been personally sworn and examined in this case.

Said depositions are marked respectively "A 9," "A 10," "A 11."

3501 Capt. R. C. WHITE sworn for defendant:

I am master of the vessel American Champion; she is engaged in the lumber business. In the early days of '68 also she was engaged in the lumber business, running from Devil river to Buffalo and Detroit.

Q. Were you at Devil river and did you take a load from there on or about the 9th of September, '68?

A. Yes, sir.

Q. Is that your bill of lading?

A. Yes, sir; that is my signature.

A true copy of the bill of lading thus identified is offered in evidence, marked "Exhibit A 12."

I can't say positively what day I left there.

Q. Did you leave on the date of the bill of lading?

A. I think I did, to the best of my knowledge. I had probably been there three days prior to that. The time for loading is generally from two and a half to three days. I heard it talked about at that time, as near as I can recollect, that there was a change in the owners of the property. It was talked among the laborers in the mill there. I didn't hear Oliver say anything about it.

Cross-examined:

I can't swear what day I got there.

Q. May you not have got there as early as the 4th?

A. I think not.

Q. As early as the 5th?

A. I think not.

Q. As early as the 6th?

A. I think I might have got there about the sixth.

(The signing of this deposition is waived by mutual consent of counsel.)

3502 EXHIBIT "A."

Hawkins' Testimony.

OSSINEKE, *Sept.* 10, '68.

Geo. W. Hawkins, Esq.

D'R SIR: I desired to have some talk with you to see how far we understood the relations of things here. Recent events have changed my feelings to some degree. You are aware that Mr. Cunningham & myself have had some talk, but how far you are advised of the nature of that talk I know not, and I wish to say that so far as I am concerned that as yet any supposed relations between Mr. C. and myself are wholly prospective, and not in fact existing at this time. I have not been advised as to whom you represent; neither do I know that you assume to represent any one. I presume that you are looking over the property in view of a prospective future; or, in other words, that you are watching developments, and as such looker-on I welcome you to the hospitality of the place. But I do not understand that you are to act as one having authority.

I write this simply as a matter of business, that the future may not be confounded with the present, or that my business relations might not be misunderstood.

I shall write to Mr. Cunningham immediately. Trust that you will either hear from him soon or make it a point to see him.

Very respectfully, yours,

GEO. J. ROBINSON.

3503 EXHIBIT "A."

Melville's Testimony.

APRIL 9, '68.

D'R GEORGE: Yours, 5th, is at hand. Glad the stoves reached you before starvation hit some. Sorry starvation did not hit some before stoves reached you. Sorry Gallup is so sick. Presume worrying about stoves made him so. George, I cannot tell you how I feel about business. I grow more ugly every time I think of the d—d fool, and of the trouble he has put me to.

I send up 1,000 of personal funds with instructions for its use. Take what you need for yourself. I can raise more, but I want to realize on lumber to meet payments to men and supplies. I will attend to Mahoney before I come up, or if it can be spared to him out of what you have, you had better. You will have the Trowbridge payment & I want every dollar of it to go to the men—mill men. If it does not, I want to know it.

George, I presume you are more of a friend to Oliver than you are to me, and what I say to you I make no bones of. I feel as though I had been grossly misused, and D. D. O. has got to walk a straight crack with me and no mistake. I am — full, and will submit to no humbuggery.

I shall send up nothing that can be dispensed with. I would rather sell lumber and pay money than send anything that I do not know what it is going for. I presume you will be pestered enough with bosses and bossing, but when I get around it may possibly be better. Keep yourself, Gallup, and St. Andre in good spirits, and the balance we will trust to luck for.

As to night-work, I am almost in favor of it for awhile. If not too great a loss, it will give us money for June account, and after that I don't care. Saw your lumber plump 1 1-16.

Y'rs, &c., ROBINSON.

George, when Kline comes up to inspect you will find him an honest, simple man, who means right. He is well posted in lumber and the market requirements, and I have requested him to make such suggestions to you as he thought might be useful. If you find him a little peculiar, bear with him for my sake. He may occupy my room.

GEORGE.

I write to Melville or Gallup. If you think it will worry Gallup you had better handle the money. I expect you to live up as near to the letter as you may deem would meet my ideas, which I presume will be no great trouble to you. I enclose a letter, 10th, to O. & R.; perhaps it will be a damper on "the firm." I will stand my chance on pulling summer crops, but I don't know who will jerk the fall crops out.

I will attend to your private wants, and if you get out of what you want take the money and buy it. I do not think we ought to keep anything in the store in the way of grub except what we design for regular rations. What do you think about it? Let me know what you think about supplies, what to get, &c., &c. I send some candy

and oranges. Hardly knew whether it was best to do so or not. Will send better assortment of that trash, or no more, as you say.

3504 EXHIBIT "B"

DETROIT, *April 24th*, '68.

FRIEND GEORGE: You probably think my letters pretty sharp. I would send you a good many things but for prudence; it might cause "feelinks."

Sec. 14, E. ½, N. W. ¼ and S. ½, N. E. ¼, located as a homestead and m't'g'd to Haines.

I will do what I can on collectorship for you. What do you think of my position in sending nothing up except to supply steam mill, and of my declining to send up nails, seeds, &c. &c. I don't think I will send up any furnishing goods except for men's wear.

Haines made me walk up to time on that chattel m't'g. I think I did the best that could be done; that m't'g. was valid. He gets 6,000 secured on 1 million x logs; I hold agreement releasing all over 1 million, I thought it was best to secure on cross axes, as they will not be wanted this year.

This chattel m't'g. and the two real m't'g's to E. & G. R. H. and C. H. & Co. are frauds on me, and I will use them, too, when the time comes—I mean it once, twice, &c.

Yours, &c.,

G. J. R.

3505 EXHIBIT "C."

APRIL 18TH, 1868.

MY DEAR MELVILLE: It is my honest wish that you may never regret your service to me in my "tangled" state of affairs; at the same time you must not forget yourself or your own interests, and I shall not say anything in my letters that will appear as though I was being informed. I was glad to receive yours [of the] 9th, but [was] pained and angered to feel that my wishes and interests were so little consulted, and what I am to do I know not. I shall write to O. & R. for file, and to Mr. O. some things he probably would want to be more private. I feel as though I ought to be with you, and yet I want to get through before I come up.

I took a bill of 3-in. plank in order to work up cull lumber. I want you to write me the earliest possible day I can have a vessel of 200 M, more or less, to take it, and also say if you think it advisable to saw more of it and how much and how fast it would be safe to contract it. The 2-in. strips should be got out of edgings, but if it cannot be handled that way, take 2-in. plank or 1-in. board on the circular saw. Let me know what you think about the Miller bill; if my father is with you let him know what I have written; would write him, but think he will not be with you. Read my letter to Mr. O. marked private; seal it, and tell Kline to hand it to Mr. O, so that you may not be seen; I want you to know its contents, but would save his feelings and your interest.

Let me know what you think about the Miller bill, and see

that I get answer by return mail. I will attend to your want soon. Capt. Bates wants some lumber, & says he will advance 2,000 to 4,000; so by next mail I will be able to say something on money; will also soon realize on Chicago shipments, and as soon as we can get our lumber in motion we ought to be easy. No more at present.

Y'rs, &c.,

G. J. R.

I am afraid I will not suit on an alarm clock; my ear is so poor for music. GEORGE.

3506 EXHIBIT "D."

APRIL 26, 1868.

G. B. M.:

I have sent you as good a clock as I could find, price 10.00, less 10%, $9.00. I bought some ladies' hose, along with some other goods. Have sent these hose up. I want to send up what goods the girls need, but don't want them all gobbled. If you think they will be H. M. need not put them in store. On L. W. Tinker's bill you will find tea & coffee for yourself in small lots. I don't know how to fit you on boots; perhaps you can suit yourself in Baldwin's bill. I have endeavored to buy nothing but the best of goods; let me know. George, every step I take O.'s motives become more apparent. His head is too small and he is not awake hours enough to make the tool of me he designed. I went in on honor, and though I may have more faults and be weaker than many, in my dealings with him he will never be able to say I have used indirection for gain.

My intercourse with Mr. Haines & Mr. Ranney was as agreeable as such unpleasant business could be, and we parted on the best of terms. I take Ranney to be an honorable young man. I rather took a fancy to him as a "foeman worthy of my steel."

Y'urs, &c.,

ROBINSON.

I would like to hear from you as to supplies & gent's furnishing goods, &c., &c.

Say to Gallup in my communications I consider him a "steam saw-mill hand." I want the "heads" to have confidence. I shall not say when to look for me until I am positive, and would rather no one would say I "am expected on next boat." If any of our S. S. M. hands are uneasy send them down and I will board them at the Exchange until paid. I am anxious what I do to have it right, and being green don't move as fast as I will hereafter. I should have sent the first shipment below. The straits fooled me this time, so you see I don't know much about lake matters; but I don't expect to learn twice, so after first lessons it will be clear gain.

What is the N. ½ N. E. ¼ sec. 15, 29, 8 E.? Tell H. M.

3507 EXHIBIT "E."

This memoranda of agreement, made this twenty-fifth day of July,

1868, between E. & G. R. Haines and C. Haines & Co. of the first part, and David D. Oliver of the second part, witnesseth:

Said E. & G. R. Haines, in consideration of one dollar and the premises & provisions herein contained, agree to discharge said Oliver from all claims against him if said Oliver shall pay said E. & G. R. Haines & Co., on the fifth day of September, 1868, the full sum of ten thousand five hundred dollars.

Said C. Haines & Co., for like considerations and under like conditions and manner, agree to discharge said D. D. Oliver from all claims against him, for the full sum of seventeen thousand dollars, if paid on said fifth day of September, 1868, which said discharge is to cancel a certain contract for a half million feet of lumber executed by me in the firm name of Oliver & Robinson.

Said Oliver, in consideration of the above provisions & premises and of one dollar to him in hand paid, hereby agrees with said E. & G. R. Haines and C. Haines & Co., as follows: If he does not pay said sums above named on the fifth day of September, 1868, that he will, on said fifth day of September, 1868, or as soon thereafter as the necessary papers can be executed, sell, transfer, and make over to said E. & G. R. Haines and C. Haines & Co., if they so choose and determine to buy, all and singular, as follows, to wit:

1st. All his interest in the firm business and assets of the firm of Oliver & Robinson, of Ossineke, Alpena, co., Michigan, together with all the real and personal effects of said firm.

2nd. All lands owned by said Oliver in whole or part, by deeds, bonds, in law or equity, situate in towns. 28 & 29, range 8 east, in Alpena & Alcona counties, State of Michigan; said Oliver reserves to himself in said township only a homestead, being E. ½ N. W. ¼ and S. ½ N. E. ¼, sec. 14, town. 29, range 8 E., being 160 acres, but is to cede such portions of said homestead necessary in banking logs and running said logs, and for the uses of dams, booms, or back water, and waives all damages arising from the said use of said river. Said Oliver also sells to said first party all claims, bonds, and mortgages due by Geo. J. Robinson to said Oliver, or to be due or payable.

The conditions of said sale by said Oliver is that said party of the first part is to pay, liquidate, or provide for the payment due from said Oliver as follows:

37,000. To G. B. Hunt *et al.* on or about the sum of thirty-seven thousand dollars.

10,000. To Jas. B. Wayne on or about the sum of ten thousand dollars.

11,000. To David Preston on or about the sum of eleven thousand dollars.

3,000. To Jas. H. Hill on or about the sum of three thousand dollars.

It is understood that said first parties if they consummate this purchase shall discharge said Oliver from all his said liabilities to them, and further to hold said Oliver good as against all liabilities of said firm of Oliver & Robinson.

When said Preston is so paid, as provided for, said Oliver will

furnish said first parties with said Preston's deeds and con-
3508 veyances for such portions of said Oliver's lands as are situate in towns. 28 & 29 N., range 8 E., and now in said Preston's name and hands as collateral to said eleven thousand dollars.

If said purchase is consummated said first parties are to discharge G. W. Hawkins from all liabilities to them grown out of his business connections with said Oliver.

Said Oliver will furnish to said first parties abstracts of title to all said lands before the 20th day of August, 1868.

It is especially understood that said Oliver, if he makes such sale to said first party, will sell to them his good will in said business, and in every matter and manner pertaining to the affairs of said property and business, and will in no wise act so as to hinder its operations, but will give all reasonable aid and countenance to its best interests and end.

Said Oliver is to be paid by said first parties in the consummation of his said sale the full sum of ten thousand dollars, in manner as follows, to wit:

Five thousand dollars in cash at the executions and delivery of the papers, and the balance, five thousand dollars, as the first party may arrange with said Oliver's creditors, Tillman, of Detroit, McCrae, Gordon & Bacon, of Detroit, T. H. Eaton, of Detroit, and C. & T. B. Spence, of Saginaw, or any or all of them, up to said sums of five thousand dollars.

If the above sale is consummated Oliver will then give said first parties the refusal to purchase the following lands, to wit: E. ½ S. W. ¼ S. 9, N. E. ¼ N. E. ¼ S. 21, N. W. fr'l ¼ N. W. fr'l ¼ S. 22, S. W. ¼ N. E. ¼, & E. ½ S. E. ¼, & N. W. ¼ S. E. ¼ S. 31, E. ½ S. W. ¼, & S. W. ¼ S. E. ¼ S. 32, lot 4, S. 33; all in towns. 29 & 30 N., range 8 E. & 9 E., and being 561.74 acres, at the full sum of ten dollars per acre, free of incumbrance, and of good title, or said Oliver will sell stumpage on said lands at two dollars p'r thousand feet.

In the deeding of said Preston lands to said first party, said first party are to obtain the consent of George J. Robinson as against said Oliver.

Said Oliver, in case he tenders said first parties the money provided for in this instrument, is to pay the expenses of estimating the quantity and quality of said lands.

Oliver also reserves from this sale one acre of land from lot number one, in section 12, T. 29 N., R. 8 E., now occupied by Mrs. Michalowski.

In witness whereof the parties have hereuuto set their hands the day and year first above written.

E. & G. R. HAINES.
C. HAINES & CO.
DAVID D. OLIVER.

Witness:
GEO. J. ROBINSON.

[Five-cent inter. revenue stamp.]

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3509 EXHIBIT "F".

JULY 22, '68.

D'R FATHER: I have been here waiting for Bates, and to-day received a telegram from Ranney, as follows: "Oliver will sell as we talked. Meet us here." I have some matters to arrange and will leave at 6 p. m. to-morrow. I shall undertake to act with care and discretion, and think I had not better close the matter until submitted to you. For the sake of large prospective gains, I do not think it best to stake too much on the issue. I go down with a full sense of the magnitude of the affair, and no small sense of the responsibility.

Sam Clements said he could get up the rail and banisters, but, from the order, he thought it would be more likely to be wrong than right. He thought the following would be what you wanted, and if it is not right correct it; if it is right send it back to me, as follows:

19 bl'k walnut banisters, 2 f't 9 in. long; 18 bl'k walnut banisters, 2 f't 5 in. long, with ¾ round tenon at bottom; 1 bl'k walnut rail, 14 f't 3 inches long; 1 bl'k walnut rail, 18 f't long; 1 bl'k walnut newel post, 5½ or 6 inches; 1 bl'k walnut circue, 7 inches diameter.

Give size and style of rail. He said some banisters would have to be longer than others, thus: .

If I am not back by Monday night, I have left $500, to be sent to you by Marine City.

The Government officials struck me pretty hard on that $2.00, making it $3.50, which is summary, oppressive, and little less than a robbery. Of course I had to pay it, with only the small satisfaction of telling them that it would not be long before there was a change in the D. B. R. institution. The present Government is getting more rotten, corrupt, and oppressive than the old Locofoco party, and nothing short of a change will save the *poor*.

I would be glad to hear from you as often as possible.

I saw quotation of sale of cargo, at Chicago, from Devil river. Of course this must be a mistake, as I have sent no such vessel.

What goods you order from Tinker *better be marked to you.*

Affectionately, y'r son, GEORGE.

3510 EXHIBIT "G."

DETROIT, *Sept.* 28, 1868.

Geo. B. Melville, Esq.

D'r GEORGE: Yours 23rd is at hand; glad to hear you gave the "Morning Star" good dispatch. The following are the vessels ordered and either gone forward or will in a few days, to wit:

Schr. E. R. Blake, gone up	175 M
Schr. Morning Star, gone up	200 M
Schr. Enterprise, gone up	180 M
For Chicago, order at broker's	200 M
For Sandusky, by order at broker's	200 M
For Buffalo, order at broker's	200 M
	1,155 M

Don't you think I had better hold up until I hear about the logs coming down? Write me just what I can rely on. You speak of the rumors among the men. Have they not been fairly dealt with by me, and have they not found all such rumors idle; have they so much confidence in Oliver or Hawkins? If so, I would like to buy up that class of paper and pay them off. The fact of the matter is, I am going to do my business up here whether the mill stands or falls; whether it runs or stands still. If they are not men enough to judge me as they have found me, then must I get on my knees to them? No; never! If they will listen to these idle rumors and will not be assured, then get a new crew, and if you cannot do that, shut it down.

I am going to Buffalo in a few days and have assurances that a new and powerful company will be organized. I have seen Ranney and Cunningham, and it looks like a dead shot. I have written to Price & Robinson to ease their minds; Price's men has a lein upon what they are getting out, which ought to satisfy them, if they are doing enough above their board to earn their pay.

I commiserate with you in your unseen and unfelt calamities as foreordained by that great Seer who knows, but he will pay you off and discharge you. He says he has got $6,000.00 that no one can touch and perhaps it burns his pocket. If McCrae, Gordon, and Bacon have not described his property right, you go for it and I will back you.

You may use this letter in any way you see fit.

Y'rs, &c.,

GEO. J. ROBINSON.

Answer by return mail.

3511 EXHIBIT "H."

DETROIT, *Sept.* 22*nd*, 1868.

Geo. B. Melville, Esq., Ossineke.

DEAR GEORGE: Your letter [of the] 17th came to hand 8 p. m., 2 hours after I parted with Hawkins. I met him near P. O. He was very friendly & communicative. Did not say anything about trouble with you. Said he was surprised and vexed at my letter. I told him I could not think of going to large outlays unless Mr. C. assumed an active part, which he had not as yet done. He said he understood Mr. C. was a partner. The man evidently did not understand where Mr. C. or himself stood in the matter, & might have led Mr. C. into complication that would not be very acceptable to Mr. C. I think if I had had a talk with him, as I designed to do, he would have been quiet. I am sorry you have had so much trouble, but I feel that I can rely on your judgment and discretion, and that my presence is not so much needed in these matters, although I assure you I am anything but comfortable in mind here, and very anxious to return to my quarters. I will sustain you in any action you may deem necessary for the protection of O. & R. Their interest and my interest are identical. You will allow no one to interfere with you in the discharge of your duties, but go on in the future as you have in the past.

As to the McArthur matter, carry out my design, no matter as to talk. If I overstep the proper bounds I am responsible, and can face the music.

Some trouble may brew among the men in consequence of this matter. If so, you will have vessels going to Chicago, and you can draw on the loads.

Lumber consigned by H. M. R. the bills [of] lading should be signed by him, which you may do by getting his authority.

You think it was well for me that I was not there, &c., &c. Well, you know I am no fighting man, don't weigh much, and have only a "right duke," offensive and defensive, yet no man of woman born has made much by "scaring" me, but how a clip in the ear would affect me I can't say.

I believe you are "master of the situation." Is not Mr. O. to all purposes of partnership dead by reason of sale? Has Mr. C. any right as a partner? Is he not really in the position of an heir to a deceased individual? Can Mr. C. sign the name of O. & R.? Can he make any agreements in their name? If I am the surviving partner, and *alive* authorized to use its name, it follows that me & my representatives should act with all the more moderation, decorum, and prudence. I have no reason to think that you would act otherwise. So far as I know your course has been honorable and high-minded, and one that you can feel no shame in meeting Mr. O., Mr. H., or any one else. You will find this your greatest reward, for, Georgie, you know, however weak we may be, and however much we may err, our greatest pleasure is in reviewing those things we have done the nearest right.

I have engaged in all two vessels for Chicago, the "E. R. Blake, 175 M," and "Morning Star, 200 M," and will probably en-
3512 gage two more to-morrow, and will try and crowd them right along, as it is getting late, and vessels scarce, and object to loading "on shore." You must give them the best possible dispatch. If necessary, take men from mill, or from Price, if he will let you, as the lumber must be hurried forward now. Speaking of Price, G. H. said he had hired Truesdell @ 40.00. I do not think he can afford to pay such wages, and ought not to start out with it.

I think of no more now, except that Geo. B. Green *have* used me meaner than I was ever used in a single small transaction by men of any decency.

Yours, &c.,

(S'g'd) GEO. J. ROBINSON.

P. S.—Green's bill. Give me the number and ft. of timber 20 ft. under; also number cull sticks of same; give me amount of boards under 12 ft., and whether common or culls.

3513 EXHIBIT "A."

David D. Oliver's Testimony.

Whereas David D. Oliver and George W. Hawkins entered into a contract with Calvin Haines, bearing date the twentieth day of November, 1866, which contract is now owned by C. Haines & Co.;

And whereas the said David D. Oliver and George W. Hawkins entered into another contract with C. Haines & Co., bearing date the twenty-fourth day of December, 1866, to furnish to them certain other lumber, amounting in the whole to two million feet of lumber, as specified in said contract;

And whereas the said David D. Oliver and George W. Hawkins have desired a modification of said contracts, to which the said C. Haines & Co. have assented: Now, therefore, this agreement, made this thirteenth day of July, 1867, witnesseth:

That the said contracts shall be, and hereby are, modified and changed in the following particulars:

The quantity of lumber to be delivered is hereby changed from two million feet to one million feet, yet to be delivered, and the prices to be paid for said lumber are hereby changed. Culls from ten dollars per thousand feet to seven dollars per thousand feet, common lumber from sixteen dollars per thousand feet to thirteen dollars per thousand feet, box or 3d clear lumber from thirty dollars per thousand feet to twenty-five dollars per thousand feet, fourths or 2d clear lumber from thirty-five dollars per thousand feet to thirty dollars per thousand feet, and clear lumber from forty dollars per thousand feet to thirty-five dollars per thousand feet.

Said one million feet of lumber to be delivered as follows: Three hundred thousand feet in the month of September, 1867, three hundred thousand feet in the month of October, 1867, and the balance of four hundred thousand feet in the month of November, 1867. About three hundred thousand feet of lumber has been delivered by said Oliver and Hawkins which is to be applied on the contract above mentioned made with said C. Haines & Co.

The two thousand dollars advanced on that contract are to be applied towards the payment of the lumber so delivered. Said Oliver & Hawkins are to allow C. Haines & Co. five hundred dollars damages on the lumber already delivered, for the reason that said lumber was not sawed as early as said contract with C. Haines required. Said lumber already delivered to be paid for at the prices mentioned. The said last-mentioned contract and the balance not paid by said advance of two thousand dollars, and said sum of five hundred dollars allowed for damages as aforesaid, to apply towards the payment of the money advanced on the contract made with Calvin Haines, and said contract made with said C. Haines & Co. is to be, and hereby is, abandoned and nothing more is to be done under or by virtue of that contract. And it is further agreed that the liquinated damages of five thousand dollars for a failure to fulfil said contract made by said Oliver & Haines, with said Calvin Haines, shall be, and hereby is, reduced from said sum of five thousand dollars to the sum of two thousand five hundred dollars, 3514 which last-mentioned sum is hereby settled, fixed, and agreed upon as the liquidated damages for the failure to fulfil said last-mentioned contract as modified by this agreement by said Oliver & Hawkins in lieu of said sum of five thousand dollars.

And it is further agreed that all the securities now held by said Calvin Haines or said C. Haines & Co. for the fulfilment of said

agreement by said Oliver & Hawkins shall continue to be held by said C. Haines & Co. as security for the fulfilment of said contract as modified by this agreement, and shall also be held by them as security for the advance of four thousand dollars, to be advanced by said C. Haines & Co. in pursuance of this agreement.

And it is further agreed on the part of C. Haines & Co. that, in consideration of the modification of said contract as herein expressed, that they will advance to said Oliver four thousand dollars in money as soon after the execution of this agreement as reasonably good security shall be provided by him for said last-mentioned sum of money.

DAVID D. OLIVER.
G. W. HAWKINS.
C. HAINES AND CO.

[Intern. Rev. five cent stamp. D. D. O. G. W. H. July 13th, 1867.]

Inter. revenue five-cent stamp.

This agreement, made the twentieth day of November, one thousand eight hundred and sixty-six, between David D. Oliver, of Alpena, in the county of Alpena, in the State of Michigan, and George W. Hawkins, of Royalton, in the county of Niagara, in the State of New York, of the first part, and Calvin Haines, of the city of Lockport, Niagara county, N. Y., of the second part, witnesseth that the party of the first part agree to sell, and do hereby sell, to the party of the second part one million and five hundred thousand feet of pine lumber, and do hereby agree to deliver the same at the city of Buffalo in the following quantities at the following times, to wit:

Two hundred thousand feet thereof to be so delivered on the first day of June, eighteen hundred and sixty-seven.

Two hundred thousand feet thereof to be so delivered on the fifteenth day of June, of the same year.

Three hundred thousand feet thereof to be so delivered on the fifteenth day of July, in the same year.

Three hundred thousand feet thereof to be so delivered on the fifteenth day of August, in the same year.

Three hundred thousand feet thereof to be so delivered on the fifteenth day of September, in the same year.

3515 And two hundred thousand feet, the balance thereof to be so delivered on the first day of October in the same year. And the same to be delivered at some convenient place on the dock in the city of Buffalo, to be provided by the party of the second part.

The lumber to be inspected and measured as the same is unloaded from the vessels at the dock aforesaid, in accordance with the rules and custom in regard thereto, prevailing at the cities of Buffalo and Albany.

And to sell the same to the party of the second part, at and for the following prices, to wit:

Culls at and for the price of ten dollars for one thousand feet.

Common at and for the price of sixteen dollars for one thousand feet.

Box at and for the price of thirty dollars for one thousand feet. Fourths at and for the price of thirty-five dollars for one thousand feet. Clear at and for the price of forty dollars for one thousand feet.

And the parties hereby agree that of all the lumber so to be delivered there shall be at least twenty-five per cent. of box, fourths and clear.

And it is also agreed that there shall be of box, fourths and clear, as much in excess of said twenty-five per cent. as the logs out of which such lumber is manufactured, will or can produce.

Inter. revenue five-cent st'p.

The party of the second part agrees to and does hereby purchase such lumber and agree to pay therefor the prices above stated, the same to be paid as follows:

Five thousand dollars to be paid in cash on the execution and delivery of this contract.

The freight on each cargo of lumber as delivered, to be paid by the party of the second part and to be treated and allowed as part of the purchase price thereof.

When the amount of lumber delivered shall, at the prices above-mentioned, amount to the said down payment, added to the freight which shall have been paid by the party of the second part at that time, and interest on said down payment of $5,000; and which it is agreed is to be computed and allowed thereon from this date until the application of such down payment, in actual payment of lumber which shall have been actually delivered, then the balance of such purchase price shall be paid as follows:

Upon the delivery of each cargo of lumber thereafter, the freight thereon shall be paid by said Haines. One-half of the balance of the price of such cargo, after deducting such freight, shall be paid down in cash and the balance thereof shall be paid in three months thereafter with interest.

It is further agreed that in case either of the parties hereto shall neglect or fail to keep and perform the agreements expressed and contained in this contract, such party shall pay to the other party hereto, as damages, the sum of five thousand dollars, which sum is hereby fixed and agreed upon, not as a penalty, but as fixed and liquidated damages.

The parties of the first part agree to manufacture said lumber in a good and workmanlike manner, one-half of the lumber to be sixteen feet in length and the balance of it twelve and fourteen

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feet in length, and to be made of the following thicknesses, to wit: one inch, one inch and a quarter, one inch and a half, and two inches, and in such proportions of each thickness as the part of the second part shall hereafter direct,

Five cents inter. revenue.

such directions to be given from time to time during the manufacture of the lumber.

The expense of inspecting and measuring said lumber at Buffalo as aforesaid, shall be paid equally by the parties hereto.

It is further agreed that the first four hundred thousand feet

of lumber to be delivered shall consist of lumber which is now manufactured, or which shall be manufactured before the first day of April, eighteen hundred and sixty-seven.

Any demurrage which shall be occasioned by the ships being obliged to wait to unload for a longer period than is customary, by reason of the dock not being in readiness to receive the lumber, shall be paid by the party of the second part.

Witness the hands & seals of the parties, the days and year first above written.

DAVID D. OLIVER. [SEAL.]
G. W. HAWKINS. [SEAL.]
C. HAINES. [SEAL.]

3517 EXHIBIT "B."

Five cents rev. st'p cancelled.

This agreement, made at the city of Buffalo, fourteenth day of January, A. D. 1867, between David D. Oliver and Robert B. Oliver, of Alpena county, Michigan, and George W. Hawkins, of Royalton, Niagara county, N. Y., composing the firm of David D. Oliver and Company, of the first part; and Emmor Haines and George R. Haines, of the city of Buffalo, N. Y., composing the firm of E. & G. R. Haines, of the second part, witnesseth: that the parties of the first part agree to sell and deliver to the parties of the second part two (2) million feet of pine lumber, the same to be delivered on a good and convenient dock in the said city of Buffalo, provided by the parties of the second part, four hundred thousand feet thereof to be delivered in the month of June, eighteen hundred and sixty-seven (1867), and four hundred thousand feet to be delivered in each month thereafter until the whole amount aforesaid shall have been delivered. The lumber to be measured and inspected by a competent and sworn inspector as the same is unloaded from the vessels at the dock, in the city of Buffalo aforesaid, in accordance with the rules of inspection prevailing at Saginaw, Michigan, and termed "Saginaw inspection." Each party hereto to pay one-half the expense of such measurement and inspection. The parties of the first so agree to sell and deliver said lumber at and for the following prices, to wit:

Culls for ten dollars for each and every one thousand feet, common for sixteen dollars for each and every one thousand feet, box or third clear for thirty dollars for each and every one thousand feet, fourth or second clear for thirty-five dollars for each and every one thousand feet, and clear or first clear for forty dollars for each and every one thousand feet; of all the lumber so to be delivered there shall be at least fifteen per cent. of box, fourths, and clear; eighteen thousand thousand feet shall be white pine, and two hundred thousand feet shall be Norway pine; each to be piled and sent forward separate and apart from the other.

The parties of the second part agree to purchase said lumber, and to pay therefor the prices above-stated, and to pay therefor as follows: Five thousand dollars to be advanced and paid down upon

the giving of security by said party of the first part as hereinafter provided, and one thousand dollars on the first day of May, eighteen hundred and sixty-seven (1867), and the remainder shall be paid as follows: One-half of each cargo shall be credited on the advances, and the other half to be paid on the delivery of each cargo until the whole of the said advances of six thousand dollars are paid up, and after the said advances are paid up, and interest on the same, then the remainder to be paid as fast as delivered. The parties of the first part agree to manufacture said lumber in a good and workmanship manner; one-half of the lumber to be sixteen feet in length, and the balance of it equally or nearly equally divided into twelve and fourteen feet long, and to be made of the following thickness, to wit: One inch, one inch and a quarter, one and a half inch, and two inches, and as wide as the logs will make, and in such proportions of each thickness as the party of the second part shall hereafter direct, such directions to be given from time to time during the manufacture of the
3518 lumber, all of said lumber to be made so as to measure the full thickness above specified, when seasoned; all of the Norway lumber to be considered common, and culls as it shall be inspected; that is, anything better than common shall be
Five cents rev. st'p cancelled. treated as common. Any demurrage which shall accrue by reason of the ships sent by the party of the first part with lumber being obliged to wait to be unloaded for a longer time than is customary, by reason of the parties of the second part not being ready to receive the lumber or not having a convenient dock ready for unloading the same, shall be paid by the party of the second part. It is understood by the parties hereto that all the above-mentioned lumber shall be manufactured from an average description and quality of timber growing in the vicinity of Devil river, in the county of Alpena, Michigan.

And it is further agreed between the said parties of the first and second parts that said party of the first part shall give said party of the second part security for the performance of the above agreement on their part by a mortgage to be made for that purpose by said George W. Hawkins to said party of the second part upon the same land in Niagara and Erie counties, in the State of New York, which is described in a mortgage made by said Hawkins to Calvin Haines, of Lockport, in said county of Niagara, dated November 20th, 1866, and recorded in the office of the clerk of said county of Niagara, in liber 103 of mortgages, at page 58; and also by a mortgage to be made for that purpose to said party of the second part by said David D. Oliver and his wife upon certain lands of said David D. Oliver, situate in the county of Alpena, in Michigan, as to which said party of the second part are to be satisfied as to the sufficiency and situation of the title and the quantity and value of said lands and their sufficiencies as security; said party of the second part are to advance said five thousand dollars upon so receiving and accepting said securities, and not before. The said advances of five thousand dollars and one thousand dollars to be made by the party

of the second part to the party of the first part, as provided in this agreement, may be made by sending either the money or drafts on New York, or partly in each way, to David Preston & Co., of Detroit, to the order of credit of said David D. Oliver & Co. This agreement is made by the party of the first part as a partnership or firm, and by the party of the second part as a partnership or firm. In case said party of the first part tender sufficient security for their performance of this agreement as herein provided, and said party of the second part refuse to accept the same, and advance said five thousand dollars, said party of the first part shall be discharged from this agreement, and the same be annuled and at an end.

In witness whereof, said parties have hereunto set their hands the day and year first above written.

DAVID D. OLIVER & CO.
E. & G. R. HAINES.
DAVID D. OLIVER.
R. B. OLIVER.
G. W. HAWKINS.

3519 On this twelfth day of July, A. D. 1867, in the city of Buffalo, New York, the parties to the within contract, made and dated at the city of Buffalo the fourteenth day of January, A. D. 1867, hereby agree to change and alter said contract in the following particular, viz: To change the amount of lumber to be delivered from two million feet of lumber, as therein stated, to one million feet, and to change the price of said lumber from ten dollars per thousand for culls to seven dollars per thousand feet, and from sixteen dollars per thousand feet for common lumber to thirteen dollars for each thousand feet, and box or 3d clear from thirty dollars per thousand feet to twenty-five dollars for each thousand feet, and fourths or 2nd clear from thirty-five dollars per thousand feet to thirty dollars per thousand, and clear from forty dollars per thousand to thirty-five dollars per thousand feet, and to so alter and change the time for the delivery of said lumber as to allow the parties of the first part to deliver three hundred thousand feet of said lumber in the month of September next, and three hundred thousand in the month of October next, and four hundred thousand feet in the month of November next. The parties of the second part to the within contract hereby agree to advance on said lumber four thousand dollars and receive interest on the same until paid, said four thousand dollars to be paid when satisfactory security shall be given for the same.

In witness whereof, the parties have hereunto set their hands, the day and year first above written.

DAVID D. OLIVER.
G. W. HAWKINS.
E. & G. R. HAINES.

[Two cents rev. stamp, cancelled.]

I hereby agree to deliver the lumber mentioned in the within modified contract as it runs from the logs, which log shall be an av-

erage of the logs now in the stream of Devil river and mentioned in a chattel mortgage given to E. & G. R. Haines & C. Haines & Co.; and I agree to so modify the old contract to said E. & G. R. Haines that they shall not be obliged to deliver any upper qualities of lumber to C. Haines & Co., as therein specified.

Buffalo, July 15th, 1867.

D. D. OLIVER.

I also hereby agree to and with E. & G. R. Haines that the old contract shall be so modified and changed that said E. & G. R. Haines shall not be obliged to pay anything on lumber as specified in the within modified contract, but the whole amount, except the freight for the same, shall be answered on D. D. Oliver's indebtedness to said E. & G. R. Haines, provided they shall pay said Oliver for all the lumber they shall receive from him up to Sept. the first, 1867, at the prices as modified by this agreement.

Buffalo, July 15th, 1867.

D. D. OLIVER.

3520 On this thirtieth day of January, A. D. 1867, at Ossineke, in the county of Alpena, the parties to the above agreement hereby agree to change or alter said contract in the following, viz: To deliver two hundred thousand in the month of June instant for four hundred thousand, with the privilege on the part of the parties of the first part to deliver as stated in the contract as above, and if the lumber is not delivered in June it shall be delivered in November. The above contract is also changed as follows: The parties of the first part will warrant ten per cent. of upper quality of lumber, viz., box fourths and clear instead of fifteen per cent., as stated in the above contract, the lumber to be inspected in Buffalo, as above stated, and all the uppers above ten per cent. shall be turned over to Calvin Haines, of Lockport, N. Y., provided the lumber sent to said Calvin Haines shall run short of twenty-five per cent. uppers.

In witness whereof the parties have hereunto set their hands, the day and year first above written.

DAVID D. OLIVER & CO.
E. & G. R. HAINES.
DAVID D. OLIVER.
R. B. OLIVER.
G. W. HAWKINS.

[Five cents rev. stamp, cancelled.]

3521 EXHIBIT "C."

Memorandum of Agreement Made the 19th day of August, A. D. 1868, between David Preston, of Detroit, & David D. Oliver, of Alpena County, Michigan.

Whereas David Preston aforesaid has located in his own name between six and seven thousand acres of wild land, and whereas said Oliver is indebted to David Preston & Co. about the sum of twelve thousand dollars, and whereas said Preston located said lands under an agreement to convey the same to said Oliver on his pay-

ing to David Preston & Co. the whole amount of his indebtedness to them, and whereas the time in which such payment was to have been made has expired, and such indebtedness remains unpaid; now, therefore, in consideration that said Preston agrees that the time for payment of said indebtedness shall be extended to October 20th, 1868, said Oliver hereby agrees that all of said indebtedness to Preston & Co. shall be paid on or before said last-mentioned date, and that in case said indebtedness remains unpaid, in whole or in part, after said date, that then the said Oliver shall forfeit all his claim, both at law and in equity, to said lands absolutely, and said Oliver agrees that time shall be of the very essence of this agreement, and that a failure on his part to fulfill shall cause a forfeiture of all his interest in said lands, without redemption and without notice.

In witness whereof said parties hereto have signed their names the day and year first above written.

DAVID D. OLIVER.
DAVID PRESTON.

[Five-cent rev. stamp, cancelled.]

In consideration that the within conditions shall be complied with, and for a valuable consideration, I hereby assign, transfer, and set over all my right, title, interest, and claim to the within contract to Henry S. Cunningham, of Buffalo, New York, and authorize him to pay up the claim therein stated, and receive from David Preston titles to said lands therein mentioned, with the express understanding and agreement that the undivided one-fourth interest in all the lands in towns. 28 & 29 north of range eight east shall be deeded to George J. Robinson, as per my agreement with him.

Ossineke, Sept. 3rd, 1868.

DAVID D. OLIVER.

[Five-cent rev. stamp, cancelled.]

3522 EXHIBIT "D."

Articles of Copartnership.

Whereas David D. Oliver has heretofore sold to George J. Robinson, of Detroit, Michigan, one undivided fourth part in seventeen thousand acres of pine lands, more or less, and other lands with improvements thereon, the latter estimated at fifty thousand dollars, for the sum of thirty-five thousand dollars, to which sum fifteen thousand dollars is hereby acknowledged as paid by said Robinson, and the remainder is to be paid as fast as the same is earned in the business hereby contemplated to be entered into by said Oliver and Robinson unless he shall choose sooner to advance and pay such balance from other sources.

And whereas said Oliver & Robinson propose hereby to enter into a copartnership for the purpose of working up the logs and timber on the lands above referred to as owned by said Oliver and said Robinson, and to this end said Oliver contributes as part of a working capital five thousand dollars of the fifteen thousand paid by said

Robinson on account of the purchase of said one-fourth interest, and said Robinson on his part contributes a like sum of five thousand dollars, making a working cash capital for said concern of ten thousand dollars ($10,000).

And whereas said Robinson hereby agrees to and does put into such copartnership business the interest he by his said purchase has acquired in the two mills on said lands and premises, and said Oliver does also hereby put in his interest in said mill, so that said concern shall have the free use of said mills and all machinery, tools, fixtures, & apparatus connected therewith; and said Oliver does also put into said concern all the personal property he owns at the said place where said premises are situated, it being at Ossineke, Alpena county, Michigan, excepting, however, his household and immediate home property, including, however, his stock of goods on hand, all horses & wagons, trucks, chains, logs, lumber, & timber, &c., &c., of every kind as the same existed on the premises upon the fifteenth day of Oct., A. D. 1867.

Now, therefore, these articles of copartnership witness as follows:

First. Said copartnership is to date from October 15th, 1867, and continue at the pleasure of the parties, with the privilege to either partner of terminating the same upon six months, previous notice given in writing to that effect: Provided, That no such notice will be required from said Robinson in case he desires to retire from said concern in one year after the date hereof, as hereinafter provided.

Second. The name of the copartnership shall be Oliver and Robinson, and the said Oliver shall receive profits and bear losses in the proportion of three-fourths, and the said Robinson in the proportion of one-fourth of the whole.

Third. The principal object of the copartnership will be and is to appropriate and convert into lumber for the most eligible market all logs now on hand at the mills of the parties at Ossineke, and all in process of being cut, as well as all that may hereafter be cut by the concern from off the lands jointly owned by said Oliver and Robinson, as above stated, employing for that purpose the two mills and appurtenances upon said premises, and when sawed into lumber to convert the same as rapidly as possible into cash, and to this end said concern are hereby conceded to have free right to
3523 enter upon all or any of said lands and cut logs therefrom, and convert the same at such time or times and in such localities, quantities, and manner as they may deem best, it being their desire and design to so cut and convert said logs on said lands as rapidly as the same can be done.

Said Robinson is to assume and have the principal charge of said business, and both parties are to draw a salary at the rate of fifteen hundred dollars per annum; and in case either one is absent from the concern and from his duties connected therewith for a period exceeding one month such salary or a proportionate amount thereof is to be charged against him as for lost time.

If either partner is absent on the business of the concern his expenses are to be paid by the concern. Said Oliver is to protect, and

does hereby on his part agree to protect, said concern and its property, money, means, and effects from any and all claims of his individual creditors for debts due and contracted by him prior to this copartnership; and he does also hereby engage and agree to protect said concern in the free and uninterrupted enjoyment of the right to enter and cut timber or logs from the lands above referred to for the business hereby contemplated, and especially does he agree with said Robinson to protect the said concern in said rights as against the mortgagees of said lands—Cunningham, Eschleman, and Hunt, of Erie county, N. York, and David Preston, of Detroit—and from any and all other persons or parties that may hereafter claim any right adverse to said concern in the matter of cutting or converting said logs or timber. Said Oliver is to do and accomplish any and all other things not hereby specified that shall or may become necessary fully and effectively to carry out the intentions and purposes of this copartnership in connection with the timber and logs on said lands or estate, the logs and timber already cut therefrom and in or about the premises above referred to.

Fourth. Accurate books of account are to be kept, showing the business of said concern, to which said parties shall at all times have free access.

Fifth. Profits shall be stated up and divided and carried to the credit of said partners, in the proportions hereinbefore stated, as often as once in every year.

Sixth. Neither partner shall use the name of the copartnership by pledge, endorsement, suretyship, or otherwise outside of the regular business of the concern, and especially is it agreed between them that no notes, checks, drafts, or other papers shall be signed with the firm-name unless the same shall be used or intended strictly for the business of said copartnership.

Nor shall either partner be at liberty to endorse by way of accommodation or become surety for third parties without first obtaining the written assent of his copartner thereto.

Seventh. These articles are intended, so far as said Oliver is concerned, to operate as a bill of sale and to pass to said copartnership the title to all property, rights, and privileges above set forth and expressed, to be by him put into the concern for its common use and benefit.

Eighth. Said Oliver hereby agrees with said Robinson that in case the latter, at the end of the first year of the copartnership, shall desire to go out and retire from the same and to surrender back 3524 his purchase of the one-fourth interest in said lands, that he shall be at liberty so to do, and in that event said Oliver hereby agrees to repay to him any and all moneys that said Robinson shall by that time have advanced or invested on account of said purchase and as a partner in this concern, but without interest thereon, said Robinson, however, being at liberty and reserving the right to retain his proportion of the profits of said business up to that date, first deducting and accounting to said Oliver for one year's interest on his, said Robinson's, bond and mortgage of twenty thousand dollars; and in case such claim to retire from said concern, and to

relinquish said purchase is made by said Robinson as aforesaid, he is to have and hold a lien upon all logs, lumber, and other the personal and real property of the concern then on hand as a security for the repayment to him by said Oliver of his, said Robinson's, advances as above provided, until the same shall be paid to him by said Oliver.

Ninth. Said Oliver hereby represents and agrees with said Robinson that the lands above referred to and in which he buys a fourth interest are free and clear from all liens and incumbrances, except such as are due to Messrs. Cunningham, Eschleman & Hunt on this their mortgage of thirty-five thousand dollars and to Mr. David Preston, of Detroit, in or about the sum of ten thousand dollars, and that he, said Oliver, has the fee of said lands and the right to convey the same, except such as now stand in the name of David Preston, and that he has the right to the title to such lands on the payment of said Preston lien or claim thereon.

In testimony whereof we have hereto set our hands and seals on this the sixteenth day of November, in the year eighteen hundred and sixty-seven.

(Signed) DAVID D. OLIVER.
GEO. J. ROBINSON.

Witness:
D. BETHUNE DUFFIELD.

[3 five cents stamps.]

Copy.

3525 EXHIBIT "E."

"Business Card."

David D. Oliver. Oliver & Robinson. George J. Robinson.

Manufacturers and dealers in Norway and white pine lumber and timber, cedar posts, shingles, and lath.

Car and bridge timber and lumber made a specialty; orders solicited, and bills promptly filled during the season of navigation; mills, at Ossineke, Alpena co., Mich.; yard, foot of Erie street, Buffalo, N. Y.

C. HAINES & CO.,
Agents, Buffalo, N. Y.
H. M. ROBINSON,
Ag't, Detroit, Mich.

3526 EXHIBIT F.

OSSINEKE, *June 9th*, 1868.

Friends Hunt and Cunningham:

GENTS: I am in great need of your assistance in my matters up here, and first I will give you a brief statement of things here, and then I will tell you what I wish you to do for me.

1st. Then I will refer you to Mr. Gallup's statement of the ship-

ment of lumber, the receipts and expenditures of last month, marked "A," and a list of what the firm owes, marked "B."

2d. By reference to B, we owe $28,925.07, and included in this is $6,000 to the Haineses, and I see that he has included some things that have been paid. Now, by looking at A, you will see that $11,000 is to be deducted from $28,925.07, which leaves $17,925.07. Now, if we deduct the $6,000 going to the Haineses (which I am satisfied that they will not get until they are compelled to pay), will leave $11,925.07.

3d. By the reference to the articles of copartnership, art. 10, you will perceive that if Robinson should declare to go out of the concern he would be entitled to his $20,000 and would have a lien upon the property until he received his money, and in that case it would take $31,925.07 to let them out.

4th. In this connection I will refer you to copy of chattel mortgage by O. & R. to H. M. Robinson, which, when the above debts are paid, will be dead, as his obligations are included.

5th. We have about 400 thousand feet of lumber sawed and two vessels loading at the dock, and the mill is cutting at the rate of one and one-half million feet per month, which will take, with the lumber we have on hand, one and a half months to saw and ship lumber enough to pay all the company's debts, and pay them their $20,000 interest, salary, etc. etc., and will take about two million feet of lumber, besides what we have sawed, and will pay all supplies and men up to that time.

6th. I have now shown you what it will take to pay all the company's debts, and pay Robinson off, and leave the property all in me again, and now I will show you what Oliver owes, and what he has to pay with, and for security:

3527 7th—

Then, 1	Hunt, Eschleman & Cunningham	$35,000 00
2	C. Haines & Co., as per copy of settlement (I refer to)	14,911 23
3	E. & G. R. Haines	13,000 00
4	J. B. Wayne, on machinery 8,000; can be bo't for	7,000 00
5	David Preston, on land	10,000 00
6	J. H. Hill, of E. Saginaw, on lands	2,500 00
7	Floating debts	82,411 23
		6,000 00
		$88,411 23

8th. My assets will be as follows:

19,000 acres of land, worth on an average $10	$190,000 00
1 water mill, worth	8,000 00
1 steam mill, worth	25,000 00
We have 7 million logs now, less by 2 leaves 5 when they are paid, @ $8	40,000 00

1 dock	5,000 00
10 horse teams, worth	4,000 00
Over	$272,000 00

Besides the property I have put into the assets, at a low figure, there is of personal property four yoke of oxen, six cows, five or six young cattle, one young colt, some fifteen pair of lumber sleighs, two wagons, trucks, carts, harnesses, whiffletrees, neck-yokes, blacksmith tools, pike levers, chains, farming tools, spare saws, beds and bedding, and 8,000 dollars' worth of goods in the store, etc., etc. The cost of the personal property is nearly equal to the amount of the property's indebtedness.

9th. I need not tell you what the Robinsons are trying to do, for it would take up too much time; besides Hawkins can tell you all about it, for he knows more than I do about the plans; but now, having showed you as near as I can to a dollar how I stand in regard to assets and liabilities, I shall now proceed to tell you what I want to do and what I want you to do for me.

10. I want to quit-claim to you all my right, title, interest, and claim to all the property that I have of every name and nature at Ossineke and vicinity, with the understanding and agreement that you will have G. W. Hawkins and R. E. Gallup appointed receivers to manage the property at a salary of twelve hundred dollars per annum each until the amount of $90,000 shall be paid.

11th. That you will buy the Wayne mortgage at as low a figure as you can and get as long a time to pay as you can.

12th. You will buy the Preston lands and take a deed from him, which will be of themselves ample security for the money you will have to pay to Preston.

3528 13th. That you will buy the C. Haines & Co.'s mortgages, both real and personal, and the E. & G. R. Haines mortgages. I think you can buy those mortgages without paying a great deal of money down, as things look a little down at present, and the Haineses could not enforce a dollar before one year. Now I shall have five million feet of lumber after Robinson is paid, and three million can go to pay indebtedness this season, and the balance for supplies this next winter; but if I can do no better I shall let it all go, and stand my chances to get supplies.

14th. That you will, when the property is all paid for and all interest and trouble is paid up, *you will* quit-claim back again to me the same lands and property I deeded to you and you bought of David Preston; and for your personal trouble aand expenses I will leave it to you to say as men what I shall pay you; or, if left to me, I hope I shall act like a man in the matter.

15th. I think you will probably be required to raise some money before I can get any from the mill; but you will have it in your own hands to pay as soon as the mill earns it; but I would suggest that if you make a loan make it for one year, and then there will be ample time to pay it back.

In regard to Mr. Wayne, I have commenced a suit against him and when you go to see him ask him if he has a mortgage on any of my property, to commence with, and then you can learn all about it without suspicion.

The parties here intend to use the Haineses for a whip to whip me out, and calculate that they will be considerably used up when that is done. If they wish to get all their pay they must not be used to whip me, but help me along.

G. W. Hawkins will act for me in the matter, and as soon as I hear that matters are all in shape I will make the deed and come down; but I cannot now without being suspected.

Get good council in the matter, and charge to the firm.

I would like to have Cunningham see J. H. Hill, of East Saginaw, and see what can be done with him, and fix the matter, if possible.

Yours truly, DAVID D. OLIVER.

3529 "A."

Mr. Oliver, I herewith give you amount of lumber shipped thus far, and net proceeds of what we have received account sales for as per request, amount shipped and to whom, as follows:

Feet.	Per schooner.	Consigned to—
201,573	Fremont	R. K. Bickford, Chicago.
65,000	Clara	Peninsular Iron Company, Detroit.
2,772	Clara	Martin Klein, Detroit.
47,160	Wanderer	R. K. Bickford, Chicago.
51,760	Scottish Chief	R. K. Bickford, Chicago.
57,495	Morning Lark	Gilcher & Son, Sandusky, Ohio.
220,035	Kanter	R. K. Bickford, Chicago.
253,119	Melvina	R. K. Bickford, Chicago.
161,001	Weschester	R. K. Bickford, Chicago.
25,438	Comely	Detroit & Milwaukee R. R., Detroit.
114,746	Comely	Martin Klein, Detroit.
42,585	St'r Dubuque	Wm. Hutchinson & Co., Cleveland.
121,756	General Siegel	R. K. Bickford, Chicago.
160,127	Presto	R. K. Bickford, Chicago.
277,334	Magile	R. K. Bickford, Chicago.
170,564	Dolphin	S. H. Sheldon & Son, Cleveland.
199,089	Sophia Smith	C. & L. C. R. R. Co., Ogdensburg, N. Y.
89,454	Mercer	Captain A. Bates, Cleveland.
2,260,708		

Net proceeds of cargoes as follows, thus far rendered:

Schooners.	Cargoes netted.
Fremont	$2,416 00
Melvina and Kanter	4,259 11
C. G. Magile and Weschester	4,282 40
General Siegel	2,193 01
Clara	1,120 00
	$13,270 51

Received of Captain Bates, as per statement	2,000 00
" on Miller contract	1,000 00
Detroit & Milwaukee R. R. bill	973 19
Captain Bates	638 49
Total amount received which has thus far been shipped	$17,882 19
Estimated amount to be received on what is shipped	$11,000 00

3530 "B."

Firm owes the following persons on account:

Wesley Hawkins	$590 83
Mead & Townsend	2,120 58
A. W. Copeland	34 73
Daniel Potter & Co.	684 00
Buhl & Ducharme	138 82
Eccord & Co.	611 86
George B. Kelley & Co.	392 00
Croul & Bros.	102 56
Theo. Eaton & Sons	309 44
Fulton Iron Works	7 19
Gray & Toynton	48 08
L. W. Tinker & Co.	3,022 96
Detroit Wooden Ware Works	23 00
Charles Higgins & Co.	269 10
Allen, Sheldon & Co.	41 38
H. P. Baldwin & Co.	233 00
Zeller & Pratt	61 62
Schloss & Bros.	352 13
Watkins & Wolf	90 42
Buhl & Ducharme	26 25
A. Miller & Co.	250 71
	$9,410 66
Sundry notes and orders	$21,514 41
	9,410 66
	$30,925 07

3531–3538 [Exhibits G, H, & I, Oliver, omitted per stipulation of counsel.]

3539 EXHIBIT "J."

Mem'd of Agreement made the 19th day of August, A. D. 1868, between David Preston, of Detroit, and David D. Oliver, of Alpena county, Michigan.

Whereas David Preston aforesaid has located in his own name between six and seven thousand acres of wild land, and whereas said Oliver is indebted to David Preston and Company about the sum of

twelve thousand dollars, and whereas said Preston located said lands under an agreement to convey the same to said Oliver on his paying to David Preston & Co. the whole amount of his indebtedness to them, and whereas the time in which such payment was to have been made has expired and such indebtedness remains unpaid:

Now, therefore, in consideration that said Preston agrees that the time for payment of said indebtedness shall be extended to October 20th, 1868, said Oliver hereby agrees that all of said indebtedness to Preston & Co. shall be paid on or before said last-mentioned date, and that in case said indebtedness remains unpaid in whole or in part after said date, that then the said Oliver shall forfeit all his claim, both at law and in equity, to said lands absolutely, and said Oliver agrees that time shall be of the very essence of this agreement, and that a failure on his part to fulfill shall cause a forfeiture of all his interest in said lands without redemption and without notice.

In witness whereof said parties hereto have signed their names the day and year first above written.

(Signed) DAVID D. OLIVER.
DAVID PRESTON & CO.

In consideration that the within conditions shall be complied with, and for a valuable consideration, I hereby assign, transfer, and set over all my right, title, interest, and claim to the within contract to Henry S. Cunningham, of Buffalo, New York, and authorize him to pay up the claim therein stated, and receive from David Preston titles to said lands therein mentioned, with the express understanding and agreement that the undivided one-fourth interest in all the lands in towns. 28 & 29 north, of range eight east, shall be deeded to George J. Robinson as pr. my agreement with him.

Ossineke, Sept. 3rd, 1868.

(Signed) D. D. OLIVER.

Copy.

3540 EXHIBIT "K."

5 ce'ts stamp. Know all men by these presents, that I, David D. Oliver, of Ossineke, Alpena county, Michigan, of the first part, for a valuable consideration and of the sum of one hundred dollars, lawful money of the United States, to me in hand paid at or before the ensealing and delivery of these presents by Henry S. Cunningham, of the city of Buffalo, New York, of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators, and assigns, an undivided three-quarter interest in all the personal property I own at said Ossineke not exempt from execution, consisting mostly of the following: All the saw logs in Devil river and on the skidways, say, five million feet, more or less, with all the lumber now made, say, six hundred thousand feet now sawed and on the dock and in transit; four boilers, with fronts, smoke-pipe, grates, &c.; one portable grist

mill and machinery; one shingle mill, with edgers, pulleys, three circle saws belonging to the same; four boilers, with steam drum, mud pipe, fronts, grates, and smoke-stack; one engine, 16 by 20, with governor, shafting, pulleys, and belts for driving; two circular saw-mills, one edger, and one butting saw; two circular saw-mills, four large circular saws 5 and 6 feet in diameter, and two circular saws four feet in diameter; eight lumber cars; twenty-five thousand cedar posts at or near the water mill and on the bay shore; eight pair of working horse teams, two pair of blacks and two pair of grays, two pair of brown and two pair of bays; six sets of harness; ten bob sleighs; one supply sleigh; two wagons; one cart; one pair trucks; all the goods, merchandise, and provisions in the store, consisting of dry goods, groceries, provisions, clothing, boots and shoes, crockery, hats, gloves, and mittens, and notions; all the blacksmith tools, consisting of two anvils, two bellows, two vises, hammers, cold chisels, pinchers, sets fullers, drills, tong and heading tools, and all the iron in and about the shop; four cows; one bull; three young cattle; six oxen, and one yearling colt, a grey; office and store fixtures, consisting of one safe, one desk, one table, two scales, cans, squats, &c.; spades, shovels, pike levers, poles, cant hooks, swamp hooks, logging chains, axes, whiffletrees, cross-cut saws, and blocks and tackle and two jack screws; stoves, dishes, table, chairs, and bedding belonging to the boarding-house; all the machinery belonging to the water mill, consisting of upright bull chain, belts, saws, &c.; all the lumber and tools in the carpenter shop. I hereby sell, transfer, and set over to the said Cunningham all my interest and claims in, of, and to the firm and business of Oliver & Robinson, of said Ossineke, to have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, forever, and I do for myself, my heirs, executors, and administrators, covenant and agree to and with the said party of the second part to warrant and defend the sale of the said goods and chattels hereby sold unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever.

In witness whereof I have hereunto set my hand and seal, this third day of September, eighteen hundred sixty-eight.

DAVID D. OLIVER.

3541 EXHIBIT "L."

Know all men by these presents, that I, David D. Oliver, of the county of Alpena, State of Michigan, of the first part, for and in consideration of the sum of a valuable consideration, and of the sum of four hundred dollars, lawful money of the United States of America, to me in hand paid by Henry S. Cunningham, of the city of Buffalo, in the State of New York, of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a cer-

tain indenture of mortgage, bearing date the sixteenth day of November, one thousand eight hundred and sixty-seven, made by George J. Robinson, of the city of Detroit, Michigan, to David D. Oliver, of Ossineke, Alpena county, Michigan, together with a bond or writing obligatory, bearing even date herewith, and recorded in the register's office of the county of Alpena, in liber —, of mortgages, at page —, with all and singular the premises therein mentioned and described, together with the bond or obligation therein also mentioned, and the moneys now due, and the interest that may hereafter grow due thereon, to have and to hold the same unto the said party of the second part, his heirs and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby authorize and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now due and owing, or hereafter to become due and owing, upon the said bond and mortgage, and, in case of payment, to give acquittance or other sufficient discharge, as fully as I might or could do if these presents were not made; and I do hereby, for my heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the second part that there is now due upon the said bond and mortgage the sum of twenty thousand dollars, with interest at seven per cent. per annum from the sixteenth day of November last, 1867, and that I have good right and lawful authority to grant, bargain, and sell the same in manner aforesaid.

Sealed and delivered the third day of Sept., 1868.

DAVID D. OLIVER.

"Copy."

3542 EXHIBIT "M."

OSSINEKE, *Sept. 5th*, 1868.

D. D. Oliver, Esq.

D'R SIR: Your attention is called to entries made by me in day-book; also to a letter to Mr. Hawkins. Should be glad to see you at Detroit.

Respectfully, GEO. J. ROBINSON.

3543 EXHIBIT "N."

OSSINEKE, *Sept. 9th*, 1868.

Shipped in good order by H. M. Robinson, for and on account of whom it may concern, on board the scow American Champion, whereof R. H. White is master, now lying in this port, and bound for the port of ——, the following account of lumber, to be delivered in like order at the port of destination, and to the consignees specified in the margin, for the following price per thousand: Lumber, $—; lath, $—; pickets, $—; shingles, $—; the dangers of navigation only excepted. All claims for damage or demurrage not noted in this bill of lading before signing are hereby waived.

In witness whereof the master of this vessel has signed bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Consignees:

Geo. B. Green & Co., Detroit, Mich.

1,619 ft. 1st clear pine lumber.
2,321 ft. 2nd clear pine lumber.
20,569 ft. common stock boards.
5,804 ft. cull stock boards.
37,857 ft. common lumber.
12,972 ft. cull lumber.
14,575 ft. clear Norway.
6,340 ft. select common.
21,155 ft. common scantling.
2,150 ft. cull scantling.
43,168 ft. common timber.
1,450 ft. cull timber.

169,980

Detroit & Milwaukee R. R., Detroit, Mich.

10,047 ft. timber.

180,027

Freight on lumber (except timber) to be current rates, and freight on timber to be twenty-five cents [per] M ft. more than lumber rates.

Advance charges, $4.

(Signed) R. H. WHITE.

3544 EXHIBIT "N."

OSSINEKE, MICH., *Oct.* 10*th*, 1868.

Shipped in good order by Geo. J. Robinson for and on account of whom it may concern, on board the E. Kanter, whereof Sam'l Wickham is master, now lying in this port, and bound for the port of ——, the following account of lumber, to be delivered in like order at the port of destination, and to the consignees specified in the margin, for the following price per thousand: Lumber, $3.50; lath, $—; pickets, $—; shingles, $—; the dangers of navigation only excepted. All claims for damage or demurrage not noted in this bill of lading before signing are hereby waived.

In witness whereof the master of this vessel has signed bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

R. K. Bickford.
71,711 ft. 8 & 10-in. com. stock boards.
20,554 ft. 8 & 10 cull boards.
39,188 ft. 12-in. common boards.
5,990 ft. 12-in. cull stock boards.
84,332 ft. common joist and scantling.

7,673 ft. cull joist and scantling.
2,671 ft. timber 4x6, 6x6, 6x8, & 8x8.

232,119

SAM'L C. WICKHAM.

3545 EXHIBIT "N."

OSSINEKE, MICH., *Oct. 9th*, 1868.

Shipped in good order by H. M. Robinson, for and on account of whom it may concern, on board the sch'r San Jacinto, whereof H. D. Thompson is master, now lying in this port, and bound for the port of ——, the following account of lumber, to be delivered in like order at the port of destination and to the consignees specified in the margin, for the following price per thousand: Lumber, $35.50; lath, $—; pickets, $—; shingles, $—; the dangers of navigation only excepted. All claims for damage or demurrage not noted in this bill of lading before signing are hereby waived.

In witness whereof the master of this vessel has signed three bills of lading, all of this tenor and date, one of which being accomplished, the others stand void.

Consignees:
R. K. Bickford, Chicago.
64,168 ft. common boards.
12,506 ft. cull boards.
36,023 ft. common stocks.
3,613 ft. cull stocks.
68,757 ft. common strips.
12,330 ft. cull do.
757 ft. box.
1,080 ft. 2nd clear.

199,244

H. D. THOMPSON.

3546 EXHIBIT "O."

This agreement, made this 3rd day of October, A. D. 1868, by and between Henry S. Cunningham, of the city of Buffalo, in the county of Erie, and State of New York, party of the first part, and the firm of C. Haines & Co., of Lockport, New York, and George J. Robinson, of Alpena, Michigan, party of the second part, witnesseth:

That said party of the first part—subject to the conditions hereinafter mentioned—agrees to convey to said party of the second part, at the expiration of thirty days from this date, all the real estate situated in townships 28 and 29 north, range eight east, in the counties of Alpena and Alcona, Michigan, which was conveyed to him by D. D. Oliver and wife by deed bearing date on or about the fifth day of September, 1868, and also all the personal property sold and conveyed to him, said Cunningham, by said Oliver by bill of sale, executed and delivered by said Oliver to said party of the first part on or about the fifth day of September, 1868; this sale and convey-

ance by said Cunningham to said party of the second part is to be without warranty, representations, or recourse to the said party of the first part, and is to be subject to the following claims:

1st. A mortgage given by D. D. Oliver & wife to H. S. Cunningham, Garret B. Hunt, and Jacob Eschleman, upon a certain part of said real estate, on which mortgage there is unpaid thirty-five thousand dollars and interest, which mortgage is now owned and held by said Hunt and Eschleman.

2nd. A claim and mortgage formerly owned and held by C. Haines & Company, of Lockport, including a mortgage executed by said Oliver and wife to C. Haines, which mortgage is now held by Dr. J. H. Helman, of Lockport, N. Y., and which claim and mortgage is about nineteen thousand dollars.

3rd. A claim by J. B. Wayne, of Detroit, Michigan, of about twelve thousand dollars, secured by a mortgage on a portion of said real estate.

4th. A claim of James H. Hill of about three thousand dollars.

5th. The copartnership indebtedness of the firm of Oliver and Robinson.

Said party of the second party, in consideration of the aforesaid agreement of said Cunningham, agrees to take said property subject to the above claim, and hereby agree to assume and to pay at the time of the conveyance of said Cunningham one-half part of a certain mortgage held by E. & G. R. Haines, which mortgage was executed by said Oliver and covers some of the lands hereby contracted and other lands belonging to D. D. Oliver, and on which mortgage there is unpaid about ten thousand five hundred dollars; said party of the second part further covenant and agree to and with said Cunningham that they will at the time of conveyance by said Cunningham release and discharge all mortgage given by George W. Hawkins to C. Haines or E. & G. R. Haines and covering lands in the counties of Erie and Niagara, in the State of New York, or either of said counties, and will protect and save harmless the said Hawkins therefrom and from the debts thereby secured.

Said party of the second part, however, in lieu of assuming and applying the one-half part of said mortgage held by E. & G. R. Haines, and of discharging said Hawkins' mortgage and saving him from trouble from the debt thereby secured, have the option
2547 to assign, or procure to be assigned, to Garret B. Hunt, of Clarence, N. Y., the mortgage of C. Haines & Co. against the said real estate of George W. Hawkins and the debts secured thereby, and, in addition, to pay, or secure the payment, to said G. B. Hunt, of the sum of four thousand dollars within one year from the 3rd day of November, 1868, and in case said party of said second part shall assign, or cause to be assigned, to said Hunt said mortgage of C. Haines & Co. and the debt secured thereby, and shall pay, or secure to be paid, within one year from November 3rd, 1868, to said Hunt the sum of four thousand dollars, then and in that case said part of the second part shall not be held to assume the one-half part of said mortgage of E. & G. R. Haines, nor to procure to be discharged the said mortgage of said Hawkins, or to save the said Hawkins harm-

less therefrom or from the debt thereby secured; said party of the first part further agrees that he will assign a certain agreement made between D. D. Oliver and David Preston for the purchase of about 6,500 acres of land in Alpena and Alcona counties, Mich.; said assignment to be also without recourse and subject to the aforesaid claims, and also subject to the contract price for said mentioned lands; and said party of the second part hereby agree that upon such assignment being made they will pay to said David Preston or assigns the said contract price, and will convey to such persons as the said Oliver shall direct, free of charge, all of said last-mentioned 6,500 acres, which lie outside of said townships twenty-eight and twenty-nine north, range eight east.

It is hereby further mutually agreed between the parties hereto that if the said party of the first part shall, within thirty days from the date hereof, pay to the said C. Haines & Co. the sum of sixteen thousand dollars, and the said George J. Robinson the sum of twenty-five thousand dollars, that then and in that case the said Cunningham shall be released and discharged from his aforesaid agreement to convey said real and personal property and to assign said agreement, and shall have and retain said property and agreements the same as though this agreement had not been made, and in that case the said Robinson agrees with Cunningham that whenever the liabilities of said firm of Oliver & Robinson shall be paid or secured to convey to said Cunningham all his, said Robinson's, title and interest in the aforesaid real and personal property, and all his, said Robinson's, interest in any real estate in the said counties of Alpena and Alcona, or either of them, and in all the personal property and effects of the firm of said Oliver & Robinson, and to release and discharge all liens or claims which he or Henry M. Robinson have, or may have, upon said real and personal property, or any part thereof; and in case said Cunningham shall elect to pay, and said Robinson shall reserve, said sum of twenty-five thousand dollars, and make said last-mentioned conveyance and release, then and in that case said Cunningham shall discharge and satisfy a certain bond and mortgage executed by said Robinson to D. D. Oliver for twenty thousand dollars, which bond and mortgage is now held by said Cunningham; and the said firm of C. Haines & Co., on payment by said Cunningham to them of said sum of sixteen thousand dollars, hereby agree to discharge, or procure to be discharged, said mortgage to them or to C. Haines held by said Helmar, and the said mortgages executed by said Hawkins, and to release and discharge the said firm of Oliver and Robinson and said Oliver and said Cunningham from all claims which they, or either of them, have, or may have,
3548 against said firm or said Oliver or said Cunningham, excepting, however, from said release two notes, bearing date April 22nd, 1868, made by Oliver and Robinson, payable to the order of C. Haines & Co., one payable Sept. 1st, 1868, and one October 1st, 1868, and on which two notes there is unpaid about the sum of $1,674.21.

It is further understood and agreed that if said Cunningham shall acquire title to said 6,500 acres of Preston land before the expira-

tion of said thirty days, he may, in lieu of assigning the agreement for sale of said lands, convey said lands to the party of the second party upon the same condition and agreement, on the part of said party of the second part, as is hereinbefore provided in case said agreement for said lands were assigned to them.

It is further mutually agreed between the parties hereto that in case the deeds from Oliver to said Cunningham first herein referred to do not include all of said Oliver's interest in lands in said townships 28 & 29, except Oliver's homestead, that then and in such case all of said 6,500 acres of land contained in said Preston's agreement which are outside of said townships 28 and 29 shall be conveyed to said Cunningham instead of to such person as said Oliver shall direct, and in that case the said Cunningham shall hold said lands until said Oliver shall convey to said party of the second part all of his interest in lands in said townships 28 and 29 not included in said deeds to said Cunningham, except said Oliver's homestead.

It is further understood and agreed that said Cunningham shall not be liable for any loss or destruction of any of the property herein contracted to be sold since the same was conveyed to him, or for any loss, destruction, or depreciation which may hereafter happen to said property, or any part thereof, nor for any act or acts of any person in possession of said property or any part thereof, but that the said Cunningham simply proposes to convey his interest in said property, be the same more or less subject to the aforesaid conditions and agreements.

In witness whereof the parties hereto have hereunto set their hands and seals this third day of October, 1868.

(Signed) C. HAINES & CO. [SEAL.]
GEO. J. ROBINSON. [SEAL.]
H. S. CUNNINGHAM. [SEAL.]

Signed, sealed, and delivered in the presence of—
BENJ. H. WILLIAMS.
O. F. BARTON.

3549 EXHIBIT "P."

Henry S. Cunningham & wife to George J. Robinson, Calvin Haines, and Philip Ranney.

Received for record Jan. 20th, 1869, at 10½ o'clock a. m.
A. HOPPER, *Register.*

Quit-Claim Deed.

U. S. rev. stamp, 50 cts. H. S. C., Nov. 12th, 1868.

This indenture, made the third day of October, in the year of our Lord one thousand eight hundred and sixty-eight, between Henry S. Cunningham and Margaret W., his wife, of the city of Buffalo, county of Erie and State of New York, party of the first part, and George J. Robinson, of Alpena, State of Michigan, and Calvin Haines and Philip M. Ranney, constituting the firm of C. Haines and Company, of Lockport, Niagara county, State of New York, of

the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, remised, released, and by these presents do grant, remise, release, and quit claim, unto the said party of the second part, and to their heirs and assigns, forever, of an undivided three-fourth interest in the following-described lands lying and being in the counties of Alpena and Alcona, and known and described as follows, to wit:

The southwest quarter of the northeast quarter and the northwest fractional quarter of the northwest quarter and south half of northwest quarter and southwest quarter of section four (4); the southwest quarter of the northwest quarter and south half of section five (5); the northwest fractional quarter of the northeast quarter and south half of northeast quarter and southeast quarter of section six (6); and the north half of northeast quarter and southeast quarter of northeast quarter of section seven (7); the north half of northwest quarter and east half of section eight (8); the northeast quarter and northwest quarter of southeast quarter and west half of section nine (9); entire section ten (10); the north half of southeast quarter and southeast quarter of southeast quarter and north half of southwest quarter and southwest quarter of southwest quarter of section eleven (11); all in township twenty-eight north, of range eight east, containing two thousand two hundred and twenty-eight acres and fifty one-hundredths of an acre, more or less.

And the southwest quarter of the southwest quarter of section twelve (12), in township twenty-eight (28) north, of range eight (8) east, thirty acres (30).

Also the undivided three-fourths interest in the following, to wit: Lots one (1), two (2), three (3), of section two (2); the northwest quarter of southeast quarter and southeast quarter of southeast quarter of section three (3); the northwest quarter
3550 of southeast quarter and southeast quarter of southeast quarter of section three (3); the northwest quarter of southeast quarter and west fractional half of northwest fractional quarter and east half of southwest quarter and northwest quarter of southwest quarter of section five (5); and east half of northeast quarter and southeast quarter of northeast quarter and the southeast quarter of northeast quarter and southwest fractional ¼ of southwest quarter and west half of southeast quarter and northeast quarter of southeast quarter of section six (6); and the northwest frac. quarter of northwest frac. quarter and west half of northeast quarter and southeast quarter of the northeast quarter of section seven (7), and lot number two (2); and east half of southwest quarter fra. southeast quarter of section eleven (11); and fractional section twelve (12), the north half of the northeast quarter and west half of northwest quarter and west half of southwest quarter of section fourteen (14); and the south half of the northeast quarter and the south half of northwest quarter and south half of section fifteen (15); and the northeast quarter and the northeast quarter of the southwest quar-

ter and the east half of section nineteen (19); and the entire section twenty (20), and entire section twenty-one (21); the north half and the northwest quarter of the southwest quarter and the east half of the southeast quarter of section twenty-two (22); and the south half of the northwest quarter and the northwest quarter of northwest quarter and southwest quarter of section twenty-three (23); and the west half of northwest quarter and southwest quarter of southwest quarter of section twenty-five (25); and the east half of northeast quarter and the west half of northwest quarter and south half of section twenty-six (26); and the entire of section twenty-seven (27); and east half of northwest quarter and the south half of the southwest quarter and the east half of section twenty-eight (28); and the east half of northeast quarter of section thirty-two (32); and the north half of the northeast quarter and northwest quarter of section thirty-three (33); and east half of section thirty-four (34); and the southeast quarter and the south half of the southwest quarter and the north half of section thirty-five (35); and the south half of the southwest quarter of section thirty-six (36); and also the undivided three-quarter interest in a two-third interest in the following: East half of northwest quarter and southwest quarter and east half of section eight (8); and the west half of northwest quarter and west half of southwest quarter of section nine (9); and the entire of section seventeen (17); all in township twenty-nine (29); north of range eight (8) east, containing sixty-two hundred and seventy-six acres and eighty-five-hundredths of an acre, more or less, subject, nevertheless, to the liens of a certain mortgage executed by David D. Oliver and wife to Garret B. Hunt, Henry S. Cunningham, and Jacob Eschleman, which mortgage bears the date November 17th, 1866, and was recorded in the register's office in Alpena county, in liber A of mortgages, on pages 297, 298, 299, and 300, and on which mortgage there is now unpaid the sum of thirty-five thousand dollars and interest, and which mortgage is now owned and held by said Hunt and Eschleman. All the lands mentioned and described in this deed are situ-
3551 ated in the State of Michigan, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises, every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part and to their heirs and assigns forever, but without recourse to said party of the first part.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

HENRY S. CUNNINGHAM. [SEAL.]
MARGARET W. CUNNINGHAM. [SEAL.]

Signed, sealed, and delivered in presence of—
O. F. BARTON.
ALDEN BAKER.

STATE OF NEW YORK, } ss:
County of Erie, City of Buffalo, }

On this 13th day of November, A. D. 1868, before me personally came Henry S. Cunningham and Margaret M., his wife, to me known to be the same persons described in and who executed the within instrument and acknowledged the execution thereof, and that the same was their free act and deed, and the said Margaret M., on a private examination by me separate and apart from her said husband, acknowledged that she executed the same freely and without any fear of or compulsion from any one.

A. BAKER,
Notary Public for Erie Co., N. Y.

3552 STATE OF NEW YORK, } ss:
Erie County, }

CLERK'S OFFICE.

I, John H. Andrus, clerk of said county, and of the courts thereof, so hereby certify that A. Baker, whose name is subscribed to the proof, or acknowledgment, of the annexed instrument, in writing, was at the time of taking such acknowledgment a notary public in said county, duly commissioned, sworn, and authorized to take the same. And further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof, or acknowledgment, is genuine. And further, that the annexed instrument is executed, acknowledged, according to the laws of the State of New York.

U. S. rev. stp., 5 cts., Nov. 18th, 1868.

In testimony whereof I have hereunto set my hand and affixed my seal of said county, at Buffalo, this 13th day of November, A. D. 1868.

[SEAL.]

JOHN H. ANDRUS,
Clerk.

ALPENA COUNTY: REGISTER'S OFFICE.

I do hereby certify that the above is a true copy of a deed on record in this office. Dated Alpena, Jan. 28th, 1869.

A. HOPPER,
Dep. Register.

3553 EXHIBIT "G".

BUFFALO, *Nov. 3rd*, 1869.

David D. Oliver, Esq., Ossineke, Mich.

DEAR SIR: This is to notify you that we have this day paid to

Garret B. Hunt, Esq., the sum of four thousand on your account, pursuant to the agreement for the purchase of land formerly belonging to you in Alpena and Lincoln counties, Michigan, made between us and Henry S. Cunningham, at Buffalo, the 3rd day of Oct., 1868, and to the terms on which you assented.

Please acknowledge receipt, and oblige

Yours, very truly,

ROBINSON, C. HAINES AND CO.

3554 EXHIBIT "R."

EAST CLARENCE, N. Y., *Nov.* 4, 1869.

SIR: I have to inform you that on the 3 inst. Messrs. Robinson, Haines and Ranney paid into me on your account four thousand dollars in cash, and that I hold the same ready to be applied on any of the indebtedness due from you to me which you may select. Please notify me on what account you desire the same credited, as I shall make my own appropriation of the money unless I hear from you.

Yours respectfully, GARRET B. HUNT.

To David D. Oliver.

3555 EXHIBIT "S."

BUFFALO, N. Y., *Nov. 7th*, 1869.

SIR: I have to inform you that on the 3rd inst. Messrs. Robinson, Haines, and Ranney paid into me on your account four thousand dollars in cash, and that I hold the same ready to be applied on any of the indebtedness due from you to me which you may select. Please notify me on what account you desire the same credited, as I shall make my own appropriation of the money unless I hear from you.

Yours respectfully, GARRET B. HUNT.

To David D. Oliver.

3556 [Exhibit T. Oliver omitted, per stipulation of counsel.]

3557 EXHIBIT "U."

David D. Oliver to Geo. J. Robinson, Calvin Haines & Philip M. Ranney.

Received for record Jan. 20th, 1869, at 10½ o'clock a. m.

A. HOPPER, *Register.*

Quit-Claim Deed.

This indenture, made the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, between David D. Oliver and Sarah A., his wife, of Alpena, in the State of Michigan, party of the first part, and George J. Robinson, of Alpena, aforesaid, and Calvin Haines and Philip M. Ranney, constituting the firm of C. Haines & Company, of Lockport, New York, of the second part, witnesseth: That the said part of the first part, for and in consideration of the sum of one dollar, lawful money of the

United States of America, to them in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, remised, released, and by these presents do grant, remise, release, and quit-claim, unto the said parties of the second part, and to their heirs and assigns, forever, all that certain piece or parcel of land situated in section six of township twenty-eight and range eight east, in the county of Alcona, in the State of Michigan, and being the northeast quarter of the northeast quarter of said section six; also the following parcels of land situated in township twenty-nine in said range eight east, to wit: In section two, the northwest fractional quarter, the north fractional half of the southwest fractional quarter; in section three, the northeast quarter of the southeast quarter and the southwest quarter of the southeast quarter; in section six, the southeast quarter of the northwest quarter; in section ten, the northwest quarter, the southwest quarter of the northeast quarter, the east half of the southeast quarter, the southwest quarter of the southeast quarter; in section eleven, the west half of the southwest quarter; in section fifteen, the north half of the northeast quarter; in section twenty-three, the east half of the northeast quarter, the east half of the southeast quarter; in section twenty-eight, the north half of the southwest quarter, together with all lands owned by me in said townships twenty-eight or twenty-nine, or either of them, except the east half of the northwest quarter and the south half of the northeast quarter of section fourteen, town. twenty-nine, range eight east, together with the right to run logs through Devil river over and through any lands owned by said David D. Oliver, on the second day of October, 1868, and for that purpose to dam said river and to flow any lands that may be necessary for the purpose of running logs or making any boom to hold logs, with the right to enter upon such lands for the purpose of constructing and maintaining such boom or booms.

3558 Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest of property possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the above decribed premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, and to their heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

DAVID D. OLIVER.

Signed, sealed and delivered in presence of—
O. F. BARTON,
BENJ. H. WILLIAMS,
Witnesses as to David D. Oliver.

STATE OF NEW YORK, } ss:
City of Buffalo, Erie County, }

On this 12th day of November, 1868, before me, the subscriber, appeared David D. Oliver, who acknowledged that he executed the within instrument, and that the same was his free act and deed; and I certify that I knew the person who made the said acknowledgment to be the individual described in and who executed the within instrument.

BENJ. H. WILLIAMS,
Commissioner of Deeds of City of Buffalo.

STATE OF NEW YORK, } ss:
Erie County, }

CLERK'S OFFICE.

I, John H. Andrus, clerk of said county, and of the *county* thereof, do hereby certify that Benj. H. Williams, whose name is subscribed to the proofs or acknowledgment of the annexed instrument in writing, was, at the time of taking such acknowledgment, a commissioner of deeds for the city of Buffalo, in said county, duly commissioned and authorized to take the same; and, further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof, as acknowledgment, is genuine; and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of New York.

U. S. rev. stamp, 5 cts. J. H. A. Nov. 13th, 1868.

In testimony whereof I have hereunto set my hand and affixed my seal of said court, at Buffalo, this 13th day of November, A. D. 1868.

[SEAL.] JOHN H. ANDRUS, *Clerk.*

REGISTER'S OFFICE, ALPENA COUNTY.

I hereby certify that the above is a true copy of a deed on record in this office.

Dated Alpena, Jan. 23rd, 1869.

A. HOPPER,
Dep't Register.

3559–3562 [Exhibits V & W, Oliver, omitted per stipulation of counsel.]

3563 EXHIBIT "X."

David D. Oliver to George J. Robinson.

Received for record Nov. 22nd, 1868, at 6 o'clock p. m.
A. HOPPER, *Register.*

[U. S. rev. stamp, 25 cts. D. D. O., G. J. R.]

Agreement to Sell and Convey.

Whereas George J. Robinson has purchased of me, David D. Oliver, one undivided fourth interest in certain lands of mine at Ossineke, Alpena county, Michigan, subject to certain incumbrances thereon, which I am to provide for and to pay, and have reserved a deed for

all such portions of said lands as are now in my name; and whereas a part of said lands, in which such interest is sold to said Robinson, are now in the name of David Preston, of Detroit, who holds them as security for certain claims—he has a contract against me amounting to the sum of ten thousand dollars or thereabouts; and whereas the whole sum to be paid for said one-quarter interest in all of said lands is thirty-four thousand dollars, of which sum I acknowledged to have received fifteen thousand dollars: Now, therefore, this agreement witnesseth, between myself and said Robinson, as follows:

1st. Whenever said Robinson shall pay the remaining sum of said money so agreed to be paid for said entire interest, together with interest thereon at the rate of seven per cent., and which sum of principal and interest money it is hereby understood is to be paid by said Robinson when earned by his share of the business of Oliver and Robinson unless he shall choose to advance it from other means and before that time, then I am to invest him with a clear and good title to said one-fourth interest in the lands described herein as now standing in the name [of] David Preston, and also to cause his said interest in all the other and remaining lands sold to him to be discharged from the mortgage held by Henry S. Cunningham, Jacob Eschleman, Garret B. Hunt, of Erie county, New York, now existing on said land in and for the stated sum of thirty-five thousand dollars, so that said Robinson shall hold his said interest in all said lands and in all improvements thereon clear and free from every incumbrance, secured in consideration of these presents of one dollar to said Oliver in hand paid; said Oliver hereby agrees with said Robinson that in case said Robinson shall, after one year from this date, desire to and endorse his said purchase of said one-fourth interest, then he, said Oliver, is to allow him to do so, and on his part agrees to take the same back from him and to repay to said Robinson the fifteen thousand dollars advanced by him on the entire purchase, and also any and all advances by said Robinson made in the way of capital or other cash advances in their said business as partners, and to release said Robinson from all obligation appertaining to said purchase, and to surrender and discharge his, said Robinson's, bond and mortgage, and also from all obligations as partners in this copartnership; said Oliver is, however, not to be requested to pay any interest on the moneys so to be refunded, but said Robinson is to
3564 [be] allowed to take and receive his share of the profits in said business for said first year, after first deducting the amount of each year's interest on said Robinson's bond and mortgage to said Oliver on account of said original purchase; said Robinson is to have and hold a lien, by way of security, on all the property, logs, lumber, real and personal property of said Oliver and of said copartnership of Oliver & Robinson, whereas the same may be situated, & such property shall so stand pledged as a security to said Robinson until said moneys are repaid; and, if not paid within a reasonable time after the expiration of said year, and the desire of said Robinson to retire, the same may be made out of said securities by some pledge or other mode of realizing thereon; then said Robinson hereby agrees to purchase each one-fourth interest in said

lands and mills and improvements, & to pay for the same in the amount and in the manner above specified, and in case he shall conclude to retire from said purchase & said firm, or from said purchase above, at the end of said year, as he hereby is entitled to do at his option, then, on repayment of his said advances on said purchase due said firm of Oliver & Robinson, as above provided, *then* he is to execute proper release to said Oliver, or to his order, of the interests he holds in said real estate & personal property and in said copartnership effects.

Fourth. Said George J. Robinson hereby agrees to pay his proportion of all taxes assessed on said lands and property after October 15th, 1867, but only his proportion in point of time of said taxes for the year 1867, and such payment of taxes, if any, is to be taken and regarded as part of his advances, to be refunded to him by said Olive in case he shall conclude to retire, as aforesaid, at the expiration of one year.

Fifth. This agreement is hereby made obligatory upon the heirs, executors, & administrators, respectively, of said parties, and full & sufficient considerations for the same is hereby entirely acknowledged each to the other.

Sixth. The following is a list of the lands standing in the name of said Preston, as above described, not included in this agreement, which conveys one undivided fourth thereof to said George J. Robinson, and to description of the other lands in which an undivided one-fourth interest is sold to said Robinson will be found in my deed to him of this date, or thereabouts.

List of Lands Standing in Name of David Preston, of Detroit, & Referred to Above, viz:

In town 28 north, of range 8 east—

	Acres.
In section 1 (1) the w ½ of s w ¼, containing	80
N of r 4, n w ¼ of n e ¼	45.96
3565 Section [2] (2) the s ½	3.20
" three (3) the s e ¼	1.60
Section four (4) of s e ¼	1.60
" three (3) of w frac ½ of n e ¼	84.70
" four (4) of n e ¼	85.96
N of r 4 n w frac ¼ of n e ¼	45.96
N of r 4 n e ¼ of n w ¼	46.54
N of r 5 n frac ½ of n e ¼	96.50
N of r 5 s w ¼ of n e ¼	40
N of r 5 n frac ½ of n w ¼	98.90
six n e frac ¼ of n e ¼	50.14
In section eleven, north half of section	320.00

In town 29 north, of range 8 east—

In section four (4) s w ¼ of n w ¼	40
" five (5) s w ¼ of n e ¼	40
" " (5) e frac ½ of n w ¼	80.58
" " (5) s ½ of s e ¼	80
" " (5) s w ¼ of s w ¼	40

In section six (6) n w ¼ of n e ¼	40
s w frac ¼ of n w fr ¼	37.35
s e ¼ of s e ¼	40
n frac ½ of n w frac ¼	71.38
seven n e ¼ of n e ¼ *of*	40
n ½ of s e ¼	80
s e ¼ of s e ¼	40
Twenty-eight (28) w ½ of n w ¼	80
Thirty (30) n e ½ of n e ¼	40
Thirty-one (31) s ½ of s e ¼	80
Thirty-two (32) w ½ w ½ of n e ¼	80
Thirty-two (32) s ½ of s w ¼	80
Thirty-two (32) w ½ of s e ¼	80
Thirty-two (32) s e ¼ of s e ¼	40
Thirty-three (33) s ½ of	320
Thirty-four (34) w ½ of s w ¼	80
s e ¼ of s w ¼	40
Thirty-six (36) w ½ of n ¼	80
Thirty-six (36) n e ¼ of s w ¼	40
Thirty-six (36) n ½ of s e ¼	80
s w ¼ of s e ¼	40

In town 29 north, of range eight (8) east—

In section eight (8) w ½ of n w ¼	80
Section ten (10) e ½ of n e ¼	80
In section ten (10) n w ¼ of n e ¼	40
Section ten (10) n w ¼ of s w ¼	40
Section eleven (11) w ½ of n w ¼	80
Section thirteen (13) e frac ½ of n e ¼	66
n ½ of n w ¼	80
n ½ of s w ¼	80
Section twenty-two (22) s ½ of s w ¼	80
s w ¼ of s e ¼	40
Twenty-six (26) s w ¼ of n e ¼	40
e ½ of n w ¼	80

3566 Dated at Detroit, Michigan, November 14th, A. D. eighteen hundred and sixty-seven.

DAVID D. OLIVER. [SEAL.]
GEO. J. ROBINSON.

In presence of—
H. M. ROBINSON,
D. BETHUNE DUFFIELD.

STATE OF MICHIGAN, }
Wayne County, } *ss:*

On this sixteenth day of November, 1867, before me, the undersigned, appeared David D. Oliver & George J. Robinson, & severally acknowledged the foregoing contract to be their free act and deed for the uses and purposes therein expressed.

D. BETHUNE DUFFIELD,
Notary Public, Wayne County, Michigan.

3567–3576 [Exhibits A, B, C, D, & E, Cunningham, omitted, per stipulation of counsel.]

3577 EXHIBIT "F."

Fifty cents rev: stamp cancelled.

Know all men by these presents, that I, David D. Oliver, of the county of Alpena, State of Michigan, of the first part, for and in consideration of the sum of a valuable consideration, and the sum of five hundred dollars lawful money of the United States of America, to me in hand paid by Henry S. Cunningham, of the city of Buffalo, in the State of New York, of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the sixteenth day of November, one thousand eight hundred and sixty seven, made by George J. Robinson, of the city of Detroit, Michigan, to David D. Oliver, of Ossineke, Alpena county, Michigan, together with a bond or writing obligatory, bearing even date herewith, and recorded in the register's office of the county of Alpena, in liber — of mortgages, at page —, with all and singular the premises therein mentioned and described, together with the bond or obligation therein also mentioned, and the moneys now due and the interest that may hereafter grow due thereon; to have and to hold the same unto the said party of the second part, his heirs and assigns forever; subject only to the proviso in the said indenture of mortgage mentioned.

And I do hereby authorize and appoint the said party of the second part my true and lawful attorney, irrevocably in my name, or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of moneys now due and owing, or hereafter to become due and owing upon the said bond and mortgage; and in case of payment to give acquittance or other sufficient discharge as fully as I might or could do, if these presents were not made. And I do hereby, for my heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the second part, that there is now due upon the said bond and mortgage the sum of twenty thousand dollars with interest at seven per cent. per annum from the sixteenth day of November last, 1867. And that I have good, right and lawful authority to grant, bargain, and sell the same in manner aforesaid.

Sealed and delivered the third day of September, 1868.

DAVID D. OLIVER.

STATE OF MICHIGAN, } ss:
County of Alpena, }

On this third day of September, A. D. one thousand eight hundred and sixty-eight, before me, a notary public in and for said county, personally appeared David D. Oliver, to me known to be

the person described in, and who executed the within instrument, and acknowledged the same to be his free act and deed.

R. E. GALLUP,
Notary Public, Alpena Co.

3578–3581 [Exhibits G, H, I, & J, Cunningham, omitted, per stipulation of counsel.]

3582 EXHIBIT K (16).

Leaves from Cunningham's daily journal of the dates of September 1 to September 12, 1868. Entries as follows:

Wednesday, September 2, 1868.—Borrowed $52 A. Tanner. Paid fare to Detroit, cash $7. Started for Detroit. Breakfast, 75c.

"Thursday, Sept. 3.—Arrived in Detroit. Fare to Alpena, $6; two meals, $1.

"Friday, Sept. 4.—Arrive at Alpena 5 o'clock a. m. Breakfast, 75c.; conveyance, $1. 'Hawkins, did you give Haines a mortgage? Yes.' Went to Devil river.

"Saturday, Sept. 5.—At Ossineke. Stamps, $3; recording, $6.12.

"Sunday, Sept. 6.—Mr. R. says that company debts amount to about $10,000, besides about $5,000 Saginaw debt, and lumber on hand, together with outstanding claims due company; have about $2,000 worth of posts. This includes $4,000 due Haines. Wants $15,000 worth supplies. Would cut 7,000,000. Have 9½ horse teams, 2 ox teams; employ 40 men. Went after huckleberries.

"Monday, Sept. 7.—D. D. Oliver claims three to four thousand dollars and G. J. Robinson one to two thousand dollars. Went after berries.

"Tuesday, Sept. 8.—Filed copy bill of sale. Recording Oliver's papers, $6.12. Go to Alpena; heavy rain.

"Wednesday, Sept. 9.—Fare to Detroit, $6. Left Alpena on the Huron. D. D. Oliver came down with me.

"Thursday, Sept. 10—Arrived at Bay City at 1 a. m., and staid over with Hiram till Friday.

"Friday, Sept. 14.—Arrived at Bay City at 1 a. m. and carried post. At East Saginaw at 6 a. m. Breakfast, 75c.; fare, 25c.; hotel $2.50. Ticket to Buffalo, $7.00; 2 meals, $7.50.

"Saturday, Sept. 12.—Arrive at Suspension Bridge 4.45 a. m.; leave 6.15."

3583–3585 [Exhibit L, Cunningham, omitted, per stipulation of counsel.]

3586 EXHIBIT "M."

Mr. Williams:

Please let Mr. Oliver see the contract between myself and C. Haines & Co. and Geo. J. Robinson.

H. S. CUNNINGHAM.

M.

3587 EXHIBIT "N."

In consideration that C. Haines and Company and George J. Robinson have this day entered into an agreement with H. S. Cunningham for the purchase of certain lands and property in Alpena and Alcona counties, in the State of Michigan, and to assume certain indebtedness of mine, and of the firm of Oliver and Robinson, I hereby agree to convey to said Haines and Company and George J. Robinson, all the lands in townships 28 and 29, range 8 east, in said counties, which were formerly owned by N. C. Thompson, and for which I hold contracts for the purchase, the said C. Haines and Company and George J. Robinson to pay to James H. Hill the balance due on the contract for the purchase of said lands, said conveyance to be made in such a manner as will vest in said C. Haines & Co. and Robinson a good title to said lands, free from all incumbrance, except said purchase price.

And I further agree to release and discharge the said George J. Robinson from all claims and demands which I have against him of every name and nature: Provided, however, that if said Cunningham shall pay to said Robinson $25,000, and to said C. Haines & Co. $16,000, as is provided in said agreement between said Cunningham and said C. Haines & Co. and Robinson, first above mentioned, then, and that case, this contract shall be void and of no effect.

In case the sale from said Cunningham to said C. Haines & Co. and Robinson shall be perfected, I agree to convey to said C. Haines & Co. and Robinson the right to run logs through Devil river over and through any lands owned by me, said Oliver, and for that purpose to dam said river and to flow any lands that may be necessary for the purpose of running logs or making any boom to hold logs.

In witness whereof I have hereunto set my hand and seal this 2nd day of October, 1868.

DAVID D. OLIVER. [SEAL.]

3588 EXHIBIT "O."

BUFFALO, *Nov. 20th*, 1868.

H. S. Cunningham, Esq.

DEAR SIR: I have seen Mr. Mason, and he says he wants the land, but has no money, and does not know what the land is worth. He said he would do this: that he would give me his notes for seven hundred dollars for sixty days and he would hold the land until it could be looked over, and if it was what it looked to be he would buy, and all I had round the shore. I want you to make out a deed of the following lands. Have it made to blank, of Detroit Mich., and the name can be put in here. Execute the deed in full, excepting the person's name and stamps, and send it as soon as you can to me at Michigan Exchange. If I can get Mr. Mason's note for $700 I can get Preston to cash it for me, and will be able to let you have $50, and send George $300, and perhaps more, and that will help him some now, and then I can get some more by-and-by. The lands are as follows:

In town. 30 north, range 8 east, section 31, S. E. ¼ of S. W. ¼. Look

and see if I deeded this to you; I think not, for I did not know that I owned it until I found it in the U. S. Land Office in above town. and range.

Section 31, S. W. ¼ of N. E. ¼; the N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, Preston lands.

Section 32, S. W. ¼ of S. W. ¼, I deeded to you.

Section 32, E. ½ of S. W. ¼, Preston lands.

Section 32, S. W. ¼ of S. E. ¼, Preston lands.

You may see me down again to Buffalo before I go up. Parties have just come down from that marble quarry with nice specimens, and I am working Roots in the matter, and you tell Colgrove that I may be down to see him, and if he wants to make something he probably [will] have a chance to do so. I think it is a good thing. There is a good deal of stir here, but money is very tight.

Richard will be himself again in a short time.

Yours truly,

DAVID D. OLIVER.

3589 EXHIBIT "P."

Two dollars rev. stamp, cancelled. Ten dollars rev. stamp, cancelled.

For value received I hereby sell, assign, transfer, and set over unto Garret B. Hunt and Jacob Eschleman, of Clarence, Erie county, New York, all my right, title, and interest in and to a certain bond and mortgage made and executed by David D. Oliver, of Alpena, Michigan, to Garret B. Hunt, Jacob Eschleman, and Henry S. Cunningham, which mortgage bears date November seventeenth, 1866, and was recorded in the register's office, in the county of Alpena, in the State of Michigan, in liber A of mortgages, on pages 297, 298, 299, and 300 thereof.

In witness whereof I have hereunto set my hand and seal this second day of September, A. D. 1868.

[SEAL.] HENRY S. CUNNINGHAM,

Sealed and delivered in presence of—
BENJ. H. WILLIAMS.
O. F. BARTON.

STATE OF NEW YORK,
County of Erie, City of Buffalo, } ss:

On the second day of September, A. D. 1868, before me personally came Henry S. Cunningham, to me known to be the same person described in and who executed the foregoing assignment and acknowledged the execution thereof.

BENJ. H. WILLIAMS,
Com. of Deeds for Buffalo.

STATE OF NEW YORK,
Erie County, Clerk's Office, } ss:

I, John H. Andrus, clerk of said county and of the courts thereof, do hereby certify that Benj. H. Williams, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writ-

ing, was, at the time of taking such acknowledgment, a commissioner of deeds for the city of Buffalo, in said county, duly commissioned, sworn, and authorized to take the same; and, further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgment is genuine; and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Buffalo, this 13th day of November, A. D. 1868.

[SEAL.] JOHN H. ANDRUS, *Clerk.*

[Five-cent rev. stamp, cancelled.]

3590 EXHIBIT "Q."

Garret B. Hunt's Testimony.

Five dollars rev. stamp, cancelled.

This indenture, made this twentieth day of November, 1866, between George W. Hawkins, of Royalton, Niagara county, N. Y., of the first part, and Calvin Haines, of the city of Lockport, Niagara county, N. Y., of the second part, witnesseth: That in consideration of the premises hereinafter stated the part- of the first part has sold, and by these presents does grant and convey, to the said party of the second part, his heirs and assigns, all that tract or parcel of land situated in the town of Royalton, in the county of Niagara and State of New York, and distinguished as the northwest part of lot number ten, in the thirteenth township and fifth range of the Holland purchase, so called, bounded south by lands deeded to Julius H. Benedict nine chains and thirty-six links, west by lot number twelve forty-two chains and nineteen links, north by lot number fifty-three nine chains thirty-six links, and east by land deeded to Josiah W. Reed, and containing thirty-nine and one-half acres of land, more or less, being the same premises deeded by John Oliver and his wife to the party of the first part by deed dated September 22nd, 1865, and recorded in the clerk's office of Niagara county in book number 102, at page 427.

Also all that tract or parcel of land situated in the town of Royalton, in the county of Niagara, in the State of New York, being the west part of lot number fourteen, in township number thirteen, in range five, bounded and described as follows:

On the north by part of lot number fifty-three ten chains and forty links, on the west by lot number sixteen sixty-four chains fifty links, on the east by a line parallel to the west boundary, and distant therefrom ten chains forty links, seventy-six chains, and on the south by Tonawanda Creek ten chains and forty links, containing seventy-three acres, more or less, being the same premises which were conveyed to the part- of the first part by Rufus S. Bracket and wife by deed dated August 24th, 1865, and recorded in the clerk's office of Niagara county in book No. 102, at page 430.

Also all that tract or parcel of land situated in the town of Newstead, in the county of Erie, in the State of New York, known and

distinguished as part of lot number thirteen, in township number thirteen, in range five, of the Holland purchase, so called, bounded and described as follows: East by lot number eleven fifty-five chains and sixty-five links, south by lot number thirty-five twenty chains, west by lot number fifteen sixty-eight chains, and north by the Tonawanda Creek, containing one hundred and eighteen acres, more or less; excepting and reserving, however, from the same twenty-nine and a half acres heretofore deeded by John Oliver to William Oliver, there being of the premises hereby conveyed eighty-eight and one-half acres, more or less, being the same premises conveyed by John Oliver and his wife to the party of the first part by deed dated September 22nd, 1865.

Whereas on the day of the date hereof the party of the first part, with one David D. Oliver, entered into a contract with Calvin Haines, the party of the second part hereto, by which they, the said George W. Hawkins and David D. Oliver, in consideration of the
3591 covenants and agreements contained in said contract, amongst other things agreed to deliver to the party of the second part hereto, at the city of Buffalo, N. Y., at different times between the first day of June and the first day of October, 1867, one million and five hundred thousand feet of lumber;

And whereas in consideration thereof the said Calvin Haines did therein agree to and did pay and advance to them, said Hawkins and Oliver, the sum of five thousand dollars, as a part of the purchase price for said lumber;

And whereas by the terms of said contract the damages for a breach of the terms and conditions thereof were fixed and stipulated at the sum of five thousand dollars, and which said contract bears date on the 20th day of November, 1866:

Now, therefore, this grant is intended as a security for the faithful application by said Hawkins and Oliver of the said sum of five thousand dollars so advanced by said Haines in payment for lumber which shall have been delivered by them to him under and by virtue of the provisions of said contract, and as stated and agreed therein, and as security for the faithful performance by said Hawkins and Oliver of the provisions and conditions of said contract on their part to be performed, and also as security for the payment by them, said Hawkins and Oliver, to said Haines of the said sum of five thousand dollars, so fixed and agreed upon, as stipulated damages for a failure to perform or a breach of said contract, in case of said breach and failure on the part of them, said Oliver and Hawkins, according to the terms and conditions of said contract.

And this conveyance shall be void in case of the faithful performance of the terms and conditions of said contract by the said Oliver and Hawkins, and in case of the application of said sum of five thousand dollars so advanced by said Haines in accordance with the terms and conditions of said contract, but in case default shall be made by said Oliver and Hawkins in the proper application of said sum of five thousand dollars so advanced as provided in said contract, it shall be lawful for the party of the second part hereto, at any time thereafter, to sell said premises as any part thereof in the

manner prescribed by law, and out of the moneys arising from such sale to retain the amount of said five thousand dollars so advanced, with interest thereon from this date.

And in case default shall be made by said Oliver and Hawkins in the performance by them of the terms and conditions of said contract, then it shall be lawful for the party of the second part hereto, at any time thereafter, to sell said premises, or any part thereof, in the manner prescribed by law, and out of the moneys arising from such sale to retain the amount of said stipulated penalty of five thousand dollars, with interest thereon, from the time of such failure to perform, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale on demand to the party of the first part hereto.

3592 In witness whereof the party of the first part has hereto set his hand and seal this 20th day of November, 1866.

G. W. HAWKINS. [SEAL.]

Words "in the," line A, page 6, and lines 2 & 3 of same page erased before signing and words "& seal" in line 11, page 7, interlined before signing.

H. D. SCRIPTURE, *Witness.*

STATE OF NEW YORK, } ss:
Niagara County, }

On this 20 day of November, 1866, personally appeared before me, the undersigned, George W. Hawkins, to me known to be the same person named in and who executed the foregoing mortgage, and acknowledged that he executed the same.

JOSHUA GASKELL,
Notary Public.

I, Calvin Haines, the mortgagee named in a certain indenture of mortgage bearing date the 20th day of November, 1866, executed by George W. Hawkins to me, and recorded in Niagara county clerk's office, in book of mortgages No. 103, page 58, and also recorded in Erie county clerk's office, in book of mortgages No. 180, page 457, for value received of Garrett B. Hunt, do hereby sell, assign, transfer, and set over to the said Garrett B. Hunt, his heirs and assigns, forever, the said mortgage and all the money thereby secured to be paid without recourse to me.

Witness my hand and seal this 7th day of September, 1869.

C. HAINES.

STATE OF NEW YORK, } ss:
Niagara County, }

On this 7th day of September, 1869, before me personally came Calvin Haines, to me personally known to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

P. D. WALTER,
Notary Public.

3593 EXHIBIT "R."

This memorandam of agreement, made this twenty-fifth day of July, 1868, between E. & G. R. Haines and C. Haines & Co., of the first part, and David D. Oliver, of the second part, witnesseth:

Said E. & G. R. Haines, in consideration of one dollar, and the premises and provisions herein contained, agree to discharge said Oliver from all claims against him if said Oliver shall pay said E. & G. R. Haines & Co. on the fifth day of September, 1868, the full sum of ten thousand five hundred dollars; said C. Haines & Co., for like consideration and under like conditions and manner, agree to discharge said D. D. Oliver from all claims against him, the full sum of seventeen thousand dollars, if paid on said fifth day of September, 1868; which said discharge is to cancel a certain contract for a half million feet of lumber executed by me in the firm name of Oliver & Robinson.

Said Oliver, in consideration of the above provisions and premises, and of one dollar to him in hand paid, hereby agree with said E. & G. R. Haines & C. Haines & Co. as follows: If he does not pay said sums above named on the fifth day of September, 1868, that he will, on said fifth day of September, 1868, or as soon thereafter as the necessary papers can be executed, sell, transfer, and make over to said E. & G. R. Haines & C. Haines & Co., if they so choose and determine to buy, all and singular as follows, to wit:

1st. All his interest in the firm business and assets of the firm of Oliver and Robinson, of Ossineke, Alpena Co., Michigan, together with all the real and personal effects of said firm.

2nd. All lands owned by said Oliver in whole or in part by deeds, bonds in law or equity, situated in towns. 28 & 29, range 8 east, in Alpena & Alcona counties, State of Michigan. Said Oliver reserves to himself in said township only a homestead, being E. ½ N. W. ¼ and S. ½ N. E. ¼ sect. 14, town. 29, range 8 E., being 160 acres, but is to cede such portions of said homestead necessary in banking logs and running said logs, and for the use of dams, booms, or back-water, and waives all damages arising from the said use of said river. Said Oliver also sells to said first party all claims, bonds, and mortgages due by George J. Robinson to said Oliver, or to be due or payable.

The conditions of said sale by said Oliver is that said party of the first part is to pay, liquidate, or provide for the payments due from said Oliver as follows: $37,000 to G. B. Hunt *et al.*, or about the sum of thirty-seven thousand dollars; —— to James B. Wayne, or about the sum of ten (10,000) thousand dollars; $11,000 to David Preston, or about the sum of eleven thousand dollars; 3,000 to James H. Hill, or about the sum of three thousand dollars.

It is understood that said first parties, if they consummate this purchase, shall discharge said Oliver from all his said liabilities to them, and, further, to hold said Oliver good as against all liabilities of said firm of Oliver & Robinson. When said Preston is so paid as provided for, said Oliver will furnish said first parties with said Preston deeds and conveyance for such portions of said Oliver lands

as are situate in towns. 28 & 29 N., range 8 E., and now in said Preston's name and hands as collateral to said eleven thousand dollars.

3594 If said purchase is consummated said first parties are to discharge G. W. Hawkins from all liabilities to them growing out of his business connections with said Oliver. Said Oliver will furnish to said first parties abstracts of title to all said lands before the twentieth day of August, 1868. It is especially understood that said Oliver, if he makes such sales to said first party, will sell to them his good will in said business and in every matter and manner pertaining to the affairs of said property and business, and will in nowise act to hinder its operations, but will give all reasonable aid and countenance to its best interests and ends. Said Oliver is to be paid by said first parties in the consummation of his said sale the full sum of ten thousand dollars in manner as follows, to wit: Five thousand dollars in cash at the execution and delivery of the papers and the balance five thousand dollars as the first parties may arrange with said Oliver's creditors, Tillman, of Detroit; McKae, Gordon & Bacon, of Detroit; T. H. Eaton, of Detroit, & C. & T. B. Spencer, of Saginaw, or any or all of them, up to said sum of five thousand dollars. If the above sale is consummated Oliver will then give said first party the refusal to purchase the following lands, to wit: E. ½ S. W. ¼ S. 9, x N. E. ¼ N. E. ¼ 8, 21, x N. W. frac. ¼ N. W. frac. ¼ S. 22, by S. W. frac. ¼ N. E. ¼ & E. ½ & N. W. ¼ S. 31, by E. ½ S. W. ¼ & S. W. ¼ S. E. ¼ S. 32, & lot 4, S. 33, all in towns. 29 & 30 N., ranges 8 E. & 9 E., & being 561.74 acres, at the full sum of ten dollars per acre, free of incumbrance & of good title, or said Oliver will sell stumpage on said lands at two dollars per thousand feet. In the deeding of said Preston lands to said first party said first party are to obtain the consent of George J. Robinson as against said Oliver.

Said Oliver, in case he tenders said first parties the money provided for in this instrument, is to pay the expense of examining the quality and quantity of said lands.

Oliver also reserves from this sale one acre of land from lot number one, in section 12, T. 29 N., R. 8 E., now occupied by Mrs. Micholowski.

In witness whereof the parties have hereunto set their hands the day and year first above written.

C. HAINES & CO.
DAVID D. OLIVER.

Witness:
GEO. J. ROBINSON.

[Ten cents rev. stamp, cancelled.]

3595–3597 [Exhibit S, Williams, omitted, per stipulation of counsel.]

3598 EXHIBIT "A."

SEPTEMBER 4, 1868.

Sold boarding-house, on act.:		
2 gall. K. oil @ 80	1 60	
20 lbs. mackerel @ 16	3 20	
4 lbs. soda @ 15	60	
15 lbs. crackers @ 15	2 25	
		7 65
Sold farm, on act.:		
1 bbl. fine meal, 200 lbs. @ 64	12 00	12 00
Bo't of L. W. Linton & Co., on act., for steam mill:		
Mdse., as per bill Aug. 27, 1868	15 37	15 37
Sold D. D. Oliver, on act.:		
2 handkerchiefs @ 30	60	
7 yards linen @ 1.00	7 00	
2 p'r socks @ 40	80	
1 p'ce frilling @ 80	80	
6 y'd mohair @ 80	4 80	
12 do. @ 31	2 25	
Thread	10	
		18 35
Mdse., dr.:		
To bill's pay	35 00	35 00
For due-bill given to Charles Blanchard this day for goods bo't of Pedlan.		
Mdse., dr.:		
To Murdock McLoud	15 40	15 40
For 1 p'r boots to Geo. B. Melville	12 00	
" repairing boots for I. Tatodye	1 75	
" " " C. Corvan	1 25	
" " shoes, G. B. M.	40	
	15 40	
Sold G. J. Robinson, on act.:		
1 p'r boots	6 00	6 00

3599 EXHIBIT A 1.

Sold B'd shoes, on act.:		
2 b'x sardines	50	
Herrings	25	
		75
Sold mill, E. & E., on act.:		
1 3-in. augur	3 25	3 25
Sold D. D. Oliver, on act.:		
20 y'ds flannel @ .50	10 00	
3 p'r mitts @ 2.00	6 00	
1 p'r shoes, 2.00; 85¼ y'ds prints, 10.63	12 63	
		28 63

9	Gave draft on P. Gilihu & Co., favor James G. Robinson, to pay Weeks & Bros., as per bill rendered, for	214 03	214 03
	Gave draft at sight on Geo. B. Gean & Co., favor Peter Faubain, for	67 09	67 09
10	Accepted Jacob Corbin's order on us, favor J. B. Meserve, for	14 00	14 00
	Sold Geo. J. Robinson, on act.:		
	½ tea @ 1.00	50	

In consequence of David D. Oliver's recorded sale to Henry S. Cunningham his personal credit is discontinued on these books until it is made known to me how such credits are to be provided for, & whether they are authorized by said Cunningham.

G. J. ROBINSON.

3600 EXHIBIT "A" 2.

SEP. 11*th*, 1868.

Know all whom it may concern, that there appears on record a sale by David D. Oliver, of his interest in the copartnership of Oliver & Robinson, and that the subscriber is not advised as to its legal bearings on himself or said firm, but he saves or reserves to himself all his legal rights. And be it further known, that he will retire from said firm & its business as provided for in its articles of copartnership, to which reference is made.

Sep. 11, 1868. GEO J. ROBINSON.

Sold Geo. J. Robinson, on act.:		
2 doz. spools thread @ 90	1 80	
10 y'd cambric @ 12	1 20	
		3 00
Steam mill, on act.:		
25 lbs. 10 p. nails @ 10	2 50	
36 lbs. spike @ 10	3 50	
		7 00
Sold boarding-house, on act.:		
2 gall. vinegar @ 50	1 00	
1 gal. K. oil @ 80	80	
		1 80
Bo't of Barlow & Potter, on act.:		
For steam mill, 26¼ lbs. Manilla rope @ 28	7 35	7 35

3601 EXHIBIT A 2.

SEP. 12, 1'68.

Sold boarding-house on act.:		
18 lbs. lard @ 25	4 50	
3 lbs. tea @ 1.25	5 25	
Sold steam mill on act.:		
4 gals. k. oil	3 20	
1 bbl. lubricating oil, 42 galls. @ 10½	52 50	
		55 00

Sold to C. Haines, of Lockport, N. Y., on act. Aug. 4, 1863, per schooner H. A. Richmond, per cargo, as follows:			
2,750 ft. clear pine lumber @ 45.00	123 75		
3,816 " 4ths @ 40.00	152 64		
5,397 " box @ 35.00	188 87		
59,934 ft. common @ 16.00	958 94		
25,869 " cull @ 10.00	258 69		
			1,682 09
Received in payment for above as follows:			
½ inspection	14 94		
1st on 97,766 ft. @ 3.50	342 18		
Our note due 1–4 Aug.	1,000 00		
Am't endorsed on note due 1–4 Sep.	325 79		
			1,682 09
Bo't of Barlow & Potter for mill on act.:			
1 keg 30*d.* nails	7 00		
1 14-inch file, ½ round file	1 13		
1 14-in. mill file	1 00		
			9 13
14 Sold boarding-house on act.:			
20 mackerel @ 16	3 20		
2 gall. vinegar @ 50	1 00		
			4 20
12 Bo't of Barlow & Potter on act:			
2 sides lacing leather, 4.00	8 00		

For steam mill, per bill Sep. 4, 1868.

3602 EXHIBIT "A 3."

Toland's Testimony.

OSSINEKE, *April 22nd*, 1868.

G. J. Robinson, Esq.

DEAR SIR: Yours of the 15th was duly rec'd, but I had no time then to answer. Having looked the matter over carefully, I make this case: The mortgage was given to secure 8,000 dollars. To E. & G. R. Haines, of Buffalo, 4,000 dollars; and to C. Haines & Co., of Lockport, 4,000. I have paid them since that time that am't, which has been applied by them on other indebtedness without any election of mine. When I settled with them the past winter, E. & G. R. Haines settled all debts, dues, and demands, and took took my notes. The first one is $2,000, payable 1st day of July, and C. Haines & Co. settled by contract that was repudiated. If they should undertake to foreclose, I shall claim that the mortgage is paid. There is a condition in the mortgage stating that I could saw the logs so long as they rec'd the lumber, and I sawed and delivered to them about one million, and E. & G. R. Haines has no claims or mortgage whatever until the first day of July, and not then if I pay the note. I told Ranney so when he was here. I also told them that I considered them foolish that they did not accept of

your proposition at one, for if O. & R. would assume $6,000 for O. they would be sure of so much, and would be as sure of the balance from O. as they are now, and upon this advice they started back to see you and buy the lumber. In view of the matter, I think you acted wisely in making them that proposition, and hope you have concluded a trade with them. I have rec'd another letter from Preston, stating that he will take ¼ of his pay June 1st; ¼? July 1st; ¼ August 1st; and balance Sept. 1st, but insists that I shall come down by first May and settle the matter up, and I shall come down the last of next week. I can run logs every other day. There is now one solid jam of logs from the pond to the State road bridge. I am running the logs from the reservoir dam. The upright in the water mill started yesterday, and runs well; can make lumber with it cheaper than with steam mill. I shall start the lath mill as soon as I can get the belts. The owner of the brig E. Cohen undertook to play dog, and I have had the sheriff put a ship-keeper on board. Schr. Fremont came here to-day, and I am loading her at the end of the dock. The mill is idle to-day; cleaning boilers, mending arch, and putting on crank. The old one was loose on the shaft as soon as the keys was out, and [when] they are loose the crank slipped off with a few raps with the sledge; it never was shrunk on. We are almost out of provisions, and expect some up on the Marine City. I am crazy with work, and have to do my writing after night, and as it is now ten o'clock I will bid you goodnight.

DAVID D. OLIVER.

3603 EXHIBIT "A 4."

Assets of Devil River Property.

2 million feet logs, worth $8 per M	$16,000 00
Mdse. on hand	8,000 00
Teams, tools, and advances to men	3,000 00
Cash to buy present supplies	10,000 00
	$37,000 00

Liabilities.

To Wayne	12,000 00	30,000
To Preston	8,000 00	4,000
To Hill	2,000 00	
To Haines	12,000 00	
To sundry persons	5,000 00	
	39,000 00	
Less	10,000 00	
	29,000 00	

O. will sell to R. conditionally one undivided ¼ interest in 17,000 acres of land in the vicinity of Devil river, Alpena Co., Mich., and the improvements thereon, amounting to 50,000 dollars, for the sum of $35,000 *dollars*, as follows: Said R. shall pay said O. $15,000 and

put in 5,000 for his ¼ $10,000 O. may use to pay his liabilities, and $10,000 shall be used in buying supplies. R. shall use his entire time and faculties in the business, and shall receive from the entire firm $—— for one year's services. Said R. shall have a stipulation in writing stating—

1st. That if said R. shall pay O. $35,000 at any time within one year from date, then said O. shall give a good unincumbered title to the said ¼ within 30 days from notice of such intention to pay said money.

2nd. For six months next after this said R. shall have a lien upon all the logs and one-half the lumber sawed after the close of navigation as security for twenty thousand dollars he puts into the concern and one-half of his salary, with seven per cent. for the use of his money if said R. wishes to withdraw from the firm at that time.

3rd. If said R. shall stay in the concern for one year, then he shall be entitled to withdraw from the concern his $20,000 *dollars* put in by him and ¼ of the net proceeds of the mill and leave the firm, and said O. shall be at liberty to discard said R. as a partner, and may refuse to deed ¼ of the premises as aforesaid unless said R. shall pay the said $35,000 before the expiration of the year as aforesaid.

3604 EXHIBIT "A 5."

OSSINEKE, *June 18th*, '68.

Geo. J. Robinson, Esq.

DEAR SIR: Yours of the 10th is at hand to-day. I hope you will be able to arrange with J. C. R. R.; we must learn what there is wanting and endeavor to fill the bill, unless you make other arrangements. J. B. W., I think, "gobbled" too much on the start; we will know when he comes out; I am pleased that you are beyond a scare, and also pleased that we shall be able to hand our creditors their money in a short time, so that J. B. W.'s blow aimed at us will fall on his own head. For me to make arrangements with J. B. W. to distress O. & R. would be like stealing money out my own purse, and I cannot see any honest reason why you should; we have had a fine rain and in the nick of time, when the mill is idle, of which you have learned ere this. We shall run to-morrow, and will get the logs all down in a solid jam as close as they can be run; there is now one solid body of logs from the steam mill to the junction of the branches; nearly all the rollways are in and we have some of the McKay logs down to the dam and will run them the next flood; we are loading a vessel at the dock. Hope we will have no more until the mill starts up again; am getting lumber and slabs cleaned up nicely, and hope you will be able to collect as fast as the lumber is delivered. Many do before.

Yours, truly, DAVID D. OLIVER.

3605 EXHIBIT "A 6."

DETROIT, *Dec.* 18*th*, 1868.

G. J. Robinson, Esq.

DEAR SIR: When I saw you last I expected to have been home long before this, but I have got on track of some land matters that has employed me most of the time; I went to see Weston and he said he would come up in the spring; if I had the property in shape that they could buy it; I think I can keep that all right; I have to go to Marquette, and will try and get home before New Year's; I saw Haines about ten days ago, and he seemed to be all right; I hope you will see that my family is cared for until I come up, and I will make all right.

Yours, DAVID D. OLIVER.

3606 EXHIBIT "A 7."

H. M. Robinson, Esq:

I estimated the lumber now on hand, and find that we have 450 M ft. on dock; we are cutting 50 M ft. per day.

Very respectfully, yours, G. B. MELVILLE.

Dated at Ossineke, October 31st, 1868.

3607 EXHIBIT "A 8."

Whereas Henry M. Robinson, of Detroit, Michigan, has this day consented and agreed to guaranty a certain contract of Oliver & Robinson with Calvin Haines & Philip M. Ranney, of Lockport, for the delivery of 500,000 ft. of pine lumber, of the character and at the times [and] in the manner set forth in said contract, which bears date Feb'y 6, 1868, and to which reference is hereby made; and whereas said contract and the proceeds thereof is largely for the benefit of myself, inasmuch as the same is applied to the payment of the interest due on my mortgage to Cunningham, Hunt, and others; and whereas I am desirous of securing said Henry M. Robinson against all loss or damages growing out of his said guaranty of said contract.

Now, therefore, I, the said David D. Oliver, do hereby, in consideration of one dollar, to me in hand paid *to* said Robinson, agree and covenant with him and his assigns fully and faithfully to indemnify and save him harmless of and from all loss or damage of every sort and kind that he may be put to by reason of his having given said guaranty as aforesaid. As a security for this engagement and covenant I do hereby pledge to him and his representatives all my interest as a partner in the firm of Oliver & Robinson, and do further authorize him to collect the same from said firm and to have the same charged against me on the books of said firm; or, failing in that, to enforce the same as a lien against my said copartnership interest to the fullest extent of any claim that may arise or spring out of said aforesaid covenant of guaranty.

Done at Detroit, Feb'y 11, 1868.

DAVID D. OLIVER. [SEAL.]

[Three two-cents rev. stamps, cancelled.]

3608 EXHIBIT "A 9."

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

DAVID D. OLIVER, Complainant,
vs.
GARRET B. HUNT, JACOB ESCHELMAN, HENRY S. CUNNINGHAM, Philip M. Ranney, Calvin Haines, and George J. Robinson, Defendants.

STATE OF MICHIGAN, *Ingham County,* } *ss:*

MARTIN HUDSON, being duly sworn, deposes and says:

I reside in the city of Lansing, State of Michigan; I am 52 years of age; I am proprietor of the Lansing House, a hotel in said city, and have been the proprietor of said hotel ever since it was opened in 1867.

A register has been kept in said hotel ever since the house was opened, in which the names of guests are entered at the time of their arrival.

Here entries are usually made by the guests themselves, each signing his own name.

I have examined the volume of the register in use in the said hotel in the month of August, 1868, and find under the date of August 21st, 1868, among the entries of arrivals the name of H. S. Cunningham.

I do not know the handwriting, neither am I acquainted with any person of that name; the entry was made August 21st, 1868; it could [not] have been made at no time since then without being made as an interlineation.

The entry is regular in every respect, and is the third arrival registered on said 21st day of August.

And further this deponent saith not.

MARTIN HUDSON.

Subscribed and sworn to before me this 17th day of February, A. D. 1871.

J. EUGENE TENNEY,
United States Circuit Court Commissioner
for the Eastern District of Michigan.

3609 EXHIBIT "A 10."

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

DAVID D. OLIVER, Complainant,

vs.

GARRET B. HUNT, CALVIN HAINES, JACOB ESCHLEMAN, GEORGE J. Robinson, Henry S. Cunningham, & Philip M. Ranney, Defendants.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Aaron W. Tyrrell, being duly sworn, deposes and says that he is a resident of Detroit, in the district and State aforesaid; that he is an alderman of said city, and one of the proprietors of the Cass House, a hotel in said city, and was a proprietor thereof during the month of August, A. D. 1868. Deponent further says that he has examined the register kept in his house for the entry by guests of their names for the month of August, 1868, and that he finds the name of Henry S. Cunningham entered thereon under date of August 20th, 1868; that deponent knows from the mark upon said register that the person whose name is so registered came to breakfast and took breakfast at his hotel on that day, but how long he he remained he is unable to state. And further deponent says not.

A. W. TYRRELL.

Sworn and subscribed before me this 17th day of February, A. D. 1871.

J. W. A. S. CULLEN,
Notary Public, Wayne County, Michigan.

3610 EXHIBIT "A 11."

In the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

DAVID D. OLIVER, Complainant,

vs.

GARRET B. HUNT, JACOB ESCHLEMAN, HENRY S. CUNNINGHAM, Calvin Haines, Philip M. Ranney, & George J. Robinson, Defendants.

EDWARD LYON being duly sworn, says that he is the propriotor of the Michigan Exchange, of Detroit, and was such proprietor on the 22nd day of August, 1868; that on said day the name of Henry S. Cunningham, of Buffalo, N. Y., was entered as a guest at said Michigan Exchange on the register of visitors belonging to said hotel, and in his own proper handwriting; that he has seen him write his name; that said Cunningham is known to this deponent, as is also said signature, and that said recorded signature he knows to be that of said Henry S. Cunningham, one of the above-named defendants, as it is entered on said books on said 22nd of August, 1868, and further deponent saith that said Cunningham has been a guest of said hotel on several occasions, and is well known to this deponent.

EDWARD LYON.

Sworn to and subscribed before me, on this 18th of Feb'y, 1871.

Sworn to and subscribed before me, this 17th day of February, A. D. 1871.

[SEAL.] EDWIN F. CONELY,
Notary Public, Wayne County Mich.

3611 EXHIBIT "A 12."

OSSINEKE, *Sept. 9th*, 1868.

Shipped in good order by H. M. Robinson, for and on account of whom it may concern, on board the scow American Champion, whereof R. H. White is master, now lying in this port and bound for the port of——, the following account of lumber, to be delivered in like order at the port of destination, and to the consignees specified in the margin, for the following price per thousand: Lumber, $—; lath, $—; pickets, $—; shingles, $—; the dangers of navigation only excepted. All claims for damage or demurrage, not noted in this bill of lading before signing, are hereby waived.

In witness whereof, the master of this vessel has signed bills of ladiug, all of this tenor and date, one of which being accomplished, the others to stand void.

Geo. B. Green & Co., Detroit, Mich., consignees:

1,619 ft. 1st clear pine lumber.
2,321 ft. 2nd clear pine lumber.
20,569 ft. common stock boards.
5,804 ft cull stock boards.
37,857 ft. common lumber.
12,972 ft. cull lumber.
14,575 ft. clear Norway.
6,340 ft. select common.
21,155 ft. common scantling.
2,150 ft. cull scantling.
43,168 ft. common timber.
1,450 ft. cull timber.

169,980

Detroit & Milwaukee R. R., Detroit, Mich., consignees:

10,047 ft. timber.

180,027

Freight on lumber—except timber—to be current rates and freight on timber to be twenty-five cents [per] M ft. more than lumber rates. Advance charges, $4.

(Signed) R. H. WHITE.

Endorsed on cover: E. Michigan. C. C. U. S. No. 214. Garrett and Jacob Eschleman, appellants, vs. David D. Oliver. Filed 9th April, 1883.